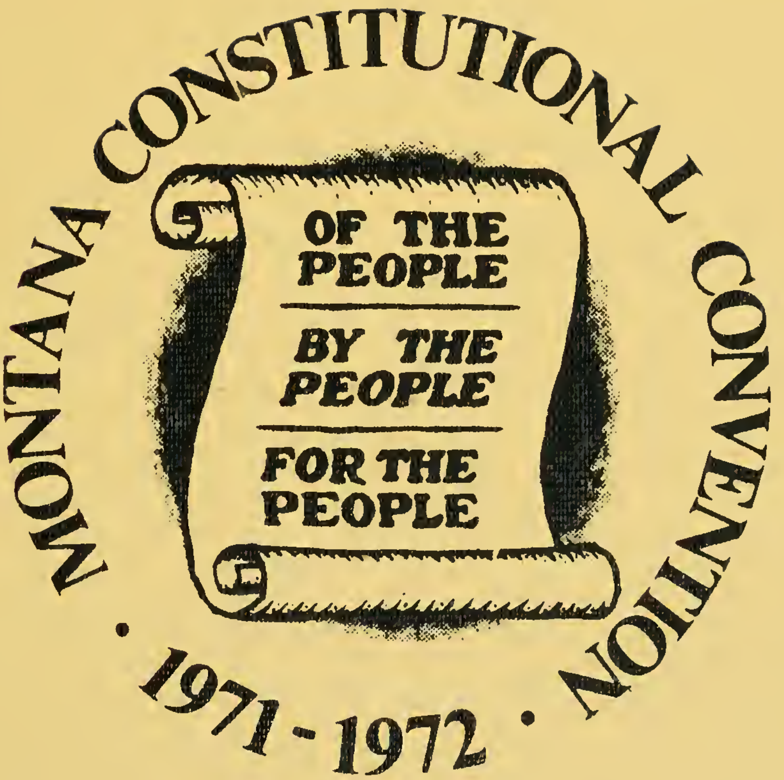
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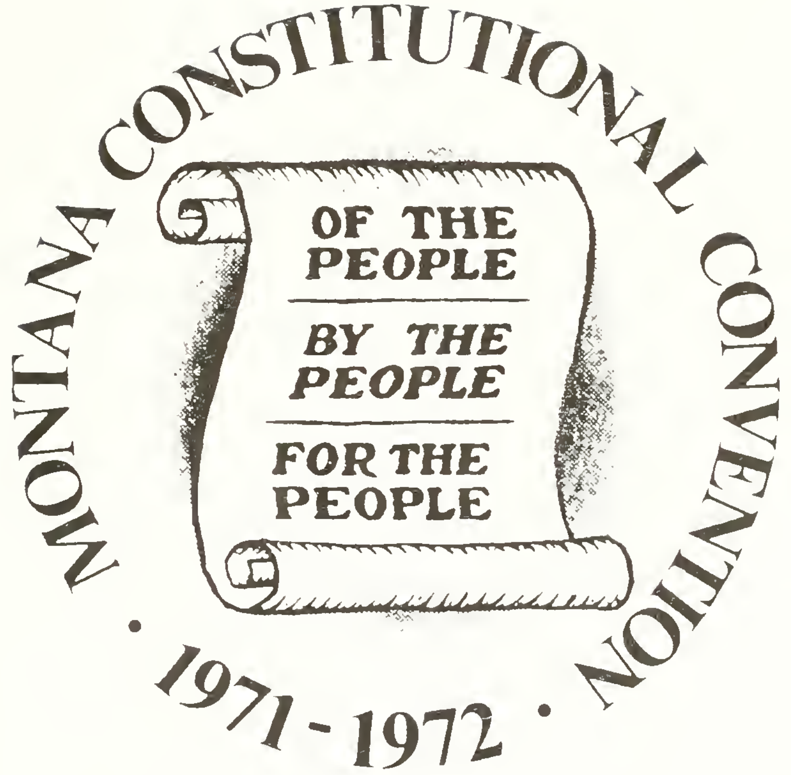
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that there is not a shared responsibility or a joint living on this earth with other people that I have to worry about. The second item I'd like to talk about—and it's sort of a rebuttal to Mr. McNeil—if I could. He talked about these two words, "government regulation" and "government monitoring". This is very fine, and I hope to support that in the proposal; but it leaves out the problem of how do I, as an average citizen, get at that? And I think that the proposal before us guarantees that I can get at it.

CHAIRMAN FELT: The delegate, Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman, ladies and gentlemen of the delegation. I rise in opposition to Mr. Cate's proposal. I think if you want socialism to step in the door, just vote for what he proposed.

CHAIRMAN FELT: The gentleman, Mr. Anderson.

DELEGATE JOHN ANDERSON: Mr. Chairman, fellow delegates. I rise in opposition, definitely, to Mr. Cate's proposal. It has often been said that a little bit of knowledge on any subject can be a dangerous thing. I am sure that Mr. Cate's proposal is that very thing; it is a dangerous thing. It is setting our very life-support system, including private property, in the hands of the state as a trustee. I do not think that this is what we want. Especially in pertaining to private property, I think Mr. George Darrell has finally come to the conclusion that setting property up as a private trust does infringe and encroach upon the private property rights of the individual. And I submit to you, in my opinion, that it does infringe and encroach upon the property rights as in Section 5 of our federal Constitution and also infringes upon our civil rights as set forth in Section 14 of our federal Constitution. So I urge the delegates to vote against Mr. Cate's proposal. Thank you.

CHAIRMAN FELT: The delegate, Mr. Siderius.

DELEGATE SIDERIUS: Mr. Chairman, will Mr. Johnson yield to a question?

CHAIRMAN FELT: Will Mr. Johnson yield to a question?

DELEGATE JOHNSON: I yield.

DELEGATE SIDERIUS: Will you define "socialism"?

CHAIRMAN FELT: We will permit this, but in debate. Let's refrain from anything that encroaches upon anybody's personal privileges. And that applies to you, too, Mr. Johnson. You go ahead and define "socialism", if you wish to.

DELEGATE JOHNSON: I think enough of a definition would be censure of government and control of all private industry, and so on. Everything that that would contain—your personal integrity—control of the private person. I just don't like central government, that's all there is to it.

CHAIRMAN FELT: Let's keep our remarks on the merits of the question.

The gentleman, Mr. Harper.

DELEGATE HARPER: Mr. Chairman. I am one who happens to believe that all of the people who are talking about our environment being in trouble are absolutely correct. I do not believe that we are in a time when business as usual will get the job done. I do not subscribe to the theory that everything is going along just fine and if we do not change any present laws or present attitudes or present actions, that everything is going to turn out all right. No environmentalist who knows anything about what's going on in the world today is subscribing to this theory anymore. I submit to you that every intelligent citizen is alarmed, and duly alarmed, at what is happening to the environmental life system in this world today. Now then, I'm concerned that somewhere in here, however we do it—it just may be this is the place to take the stand on it—Mr. Cate's proposal—that the people be given a chance to join in this battle. I do not see the Constitution as a place where we parcel out partial rights to the people, but it's the peoples' document for parceling out duties to agencies which will work in their behalf. The citizen is capable of fighting his own battles, if he's given the tools. We don't need bureaucratic middlemen; and when the citizen understands he has direct stakes in the outcome, he always fights best. Now, private and class actions by citizens only help those agencies of government which are trying to protect and enhance the environment of our country. Let me use an illustration. Citizens' suits complement the enforcement power of government agencies in the fields of antitrust and security frauds, for example. We have good examples of how this complimentary action works. In both of these areas, Congress and the courts have relied on private suits to aid enforcement. The Department of Justice and the Securities Exchange Commission are understaffed and unable to bring all the suits necessary for enforcing regulatory laws. The enforcement of antipollution laws will benefit in the same manner if private citizen action is allowed. This fight for life—I want to use that word again—this fight for life, literally, is our fight; and we must have the equipment to wage the battle as people. Now, what about use of suits overturning private property rights and so forth? Won't court dockets be crowded with environmental suits? Well, in practice, this hasn't occurred in other states which allow such suits; and, of course, the courts will decide what is nuisance in a suit. Your suit against my pollution of your well may be a nuisance to me but a vital matter to you as you drink your water. Now, Connecticut has a statute of public trust, and they're having no trouble with so-called "nuisance suits". The Connecticut Deputy Attorney General writes that the safeguards provided by bonding, by high costs of litigation, plus the redress a defendant has from a wrongful suit, are adequate. And I'm sure all these protections will be written into the Montana law. The Constitutional Convention executive secretary in North Dakota wrote in a similar fashion, echoing the same opinions as those expressed by Connecticut. And so the word of experience comes from New York, Minnesota, Washington, Florida, Indiana, Michigan, Illinois—all of which recently wrote good constitutional provisions allowing—or the last two, constitutional provisions, even, allowing for adequate legal proceedings. Now, all of these states have preceded Montana in allowing their citizens to join their own battle for a clean and healthful environment for their children, and not a one of these states has more to protect than the treasure of the Treasure State. I submit to you that, here or somewhere, this Convention—we as delegates—need to take a stand to make sure the people have some teeth in an environmental law.

CHAIRMAN FELT: I intend to recognize at least one person who may be in opposition to Mr. Cate's motion and certainly will permit him to close. If more feel it's necessary to speak, that's all right.

The gentleman, Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman. I would like to pose one question to Delegate Harper.

CHAIRMAN FELT: Does the gentleman, Mr. Harper, yield?

DELEGATE HARPER: Yes, I will.

DELEGATE KAMHOOT: Delegate Harper, did you say that Michigan had a public trust concept?

DELEGATE HARPER: It is statutory, yes.

DELEGATE KAMHOOT: Thank you. Mr. Chairman.

CHAIRMAN FELT: Mr. Kamhoot.

DELEGATE KAMHOOT: I have an editorial here from the State of Michigan, from a newspaper. If the delegates would just bear with me for just a little bit, I'll be as brief as I can. I've deleted a good deal of it, but I think that we should give a lot of thought to this—how far it can go when your government is going to come in and, mandatorily, tell people what they could do. Here's the editorial from the State of Michigan: The state water resources commission has ordered Lampair City [Lapeer?] and the townships of Elba and Mayfield to build a regional sewer project, which will cost around $14 million. They are polluting the Flint River and must stop, the WRC says. Also, the WRC says, by making it a regional project, the three communities become eligible for huge gobs of state and federal aid, all of which sounds just dandy. These days the ecology ranks right up with apple pie. Not even the worst villain will defend pollution, and not even the most conservative communities refuse money from Washington and Lansing. But is that federal and state money really available? It petered out this year, and there's absolutely no guarantees if it will materialize next year, or any other year. In the meantime, the two townships and the city face, in 1973, construction deadline without the slightest assurance of how they could ever pay for such a project. What are their alternatives? Could the pollution be cured on an individual basis, community by community. or even polluter by polluter? Just who are the polluters? What power does the state have to enforce its order? What happens to communities that don't comply? Is the township board arrested? There are many interesting and unanswered questions. We do not raise them idly. We raise them, in fact, on the prompting of Eugene Black, who is a justice of the Michigan State Supreme Court. He is also a former Attorney General of Michigan. It is with great interest that we read a letter from Justice Black published in the February 7th *Port Huron Times-Herald*. He objected to the highhanded way the WRC is giving orders, and he objected to the meek way his township was falling in line. Here are a few quotes from Justice Black's letter. Justice Black: "The only propered [proffered] excuse for WRC's dictatorial crowding of the township board is that there will be no state or federal aid for the proposed quandary mania unless the township joins in such a regional plan. For the present, I confine to one fact my objections to WRC's threatened imposition upon the townships. It is that the township board seems to think that its taxpayers are absolutely defenseless and have no choice but that of surrender to another Lansing bureau—a bureau that cares less than a tinker's damn about the deplorable consequences of confiscatory taxation. In a word, the board hasn't even bothered to obtain the advice of its attorney as regards the specific cost to the taxpayers of the proposed regional project; the legal alternatives that are available to the township by identity of the places in the township of the alleged pollution; the cost of proper correction of the latter's specific within-the-township project; the actual, if any, extent on availability of state and federal aid; the constitutional validity of WRC's imposition upon the township of its will. The board simply doesn't seem to realize that eligibility of state or federal aid never guarantees any such aid and that once the township signs the big mortgage, the taxpayers must pay, whether aid comes through or not." Justice Black said he was writing as a taxpayer only, but there's no question that his fellow residents felt the weight of his position and experience behind his words. The day after the letter was published, the Port Huron township board voted to ignore the WRC's recent order and to correct the pollution itself. Previously, the WRC had declared that this would be totally unacceptable to the state. "They may be dictators, but I'm not afraid of the WRC and I don't believe they are that powerful. People have taken up arms for less", said Robert Lowendowski, township treasurer. Now, their—the State of Michigan has been held up to us many, many times in the committee. This has been quoted, oh, dozens of times; how well it works. Only 35 lawsuits have been instigated, so it proves that it's real good. Here's an editorial right out of one of the Michigan papers. Here's a statement by a Supreme Court justice, speaking as a taxpayer. So I submit to you, delegates, you better give this public trust concept a big, long look before we adopt it in Montana, because it is not necessary in this state. Thank you, Mr. Chairman.

CHAIRMAN FELT: The gentleman, Mr. Vermillion.

DELEGATE VERMILLION: Mr. Chairman, would Mr. Cate yield to a question, please?

CHAIRMAN FELT: Will Mr. Cate yield to a question?

DELEGATE CATE: I certainly would.

DELEGATE VERMILLION: Mr. Cate, as you know, there's been a good deal of concern, when you hear the words "public trust", that there's going to be a good many frivolous suits used on it. I wonder if you could expand on this business of frivolous suits under your proposal.

CHAIRMAN FELT: Would the gentleman, Mr. Cate, be able to do that in his closing, do you think?

DELEGATE CATE: I could do it in my closing, I suppose.

CHAIRMAN FELT: The gentleman, Mr. Scanlin. Do you wish to be recognized?

DELEGATE SCANLIN: Mr. Chairman. In the words of Delegate Mahoney, who is absent today, "I'm worried about our environment." But the tremendous steps that the last session of the Montana Legislature took to face these problems renewed my confidence in what a Legislature can do. And I rise in objection to this amendment.

CHAIRMAN FELT: The gentleman, Mr. Martin.

DELEGATE MARTIN: Mr. Chairman. It's odd that 100 years ago today, there was a small handful of people in Helena who were celebrating what perhaps has been one of the greatest things that could happen to the West. On that date—on March 1st, 1872—100 years ago, President Grant signed the measure establishing Yellowstone Park and dedicated and set apart, as a public park or pleasuring ground, for the benefit and enjoyment of the people and for the preservation from injury or spoilation of all timber, mineral deposits, natural curiosities or wonders and their retention in their natural condition. It was a little band of Helena people, Montana residents, that wanted to see whether the stories and the tall tales that were told by the Indians and Jim Bridger were a reality that led to the trip of this small band of people from Helena in 1870 to see the Yellowstone National Park country. And as they went there, they went there with an idea that they were going to divide it up, take on concessions of their own, and preserve it. But at the campfire on the last night that they were in the park, they came to the conclusion that it would be a crime if this were not to be set aside for the benefit and enjoyment of the people. They initiated this effort, and the result has been something which has not only spread throughout the United States but has also spread throughout the world, and that has been the development of the national park idea.

CHAIRMAN FELT: Mr. Martin, we're very close to 12:00, so if you can complete the dedication of the park.

DELEGATE MARTIN: Well, I think, Mr. Chairman, that this is important enough so that I should be given a little time on it.

CHAIRMAN FELT: You are.

DELEGATE MARTIN: The establishment of Yellowstone Park, in my opinion, has paid far greater dividends than did the founding or the discovery of gold in Last Chance Gulch or in Bannack or in Alder Gulch or anything else, because it's preserved a continuing resource—one that has been continued. But let me tell you about some things that are happening with regard to this—in which I would suggest that we think in terms of a little flexibility in providing for the future, and that is not to tie something down which can't be changed. Today, in celebration of the Yellowstone Park 100th anniversary, there is to be a dinner in Washington, D.C., tonight. And one of the things that's most obvious is the fact that they've rewritten history and give no credit to the people from Helena and the people from Montana who founded it. There has been a time, and still is today, where Yellowstone Park is being used and a sales tax is being collected from business in Yellowstone Park, as well as gasoline, for the benefit of the State of Wyoming. I don't think that we want that sort of thing. Another thing that has happened is that, under the program that a study team that has been developed in Yellowstone Park adopted, they have turned around and brought in a bunch of bureaucrats from Washington and other places, without regard to the people in the tristate area, and they adopt a master study plan in which they are now going to permit the public generally to use only the blue corridor for visiting Yellowstone Park. They likely, shortly, will be abandoning automobiles; they'll be doing a lot of other things. The trouble is, with all of this, the people in the area do not have an opportunity to present an opposition to this. Even in the planning of this 100th anniversary celebration, because Congress initiated it, we do have a senator from Wyoming and a representative, John Melcher, from Montana, who is on the committee. But the committee acts only after the bureaucrats get through, and the result is that we have a situation, which I think is a pitiful situation, without regard to what's happening to the adjoining area. For instance, now as they begin to tighten up, they're going to eliminate lodging, they're going to eliminate camping, they're going to do this—they're even going to require that the waste and the pollution and the—garbage of Yellowstone Park probably will have to be hauled out into the adjoining areas. These are some things that you've got to think about. We need some flexibility. We should put a fundamental article in there with regard to protection of the environment, but we certainly shouldn't tie ourselves down. I oppose the Cate amendment.

CHAIRMAN FELT: The gentleman, Mr. Simon.

DELEGATE SIMON: Mr. Chairman. It's noontime and I know we're going to recess, but during that time, I wonder if it would be in order that I ask that this be printed. It's a very vital proposal, and we have a form that's supposed to be on our desks. It's a long one for most of us that are not stenographers. I wish it could be printed and on the desks before we go. Thank you very much.

CHAIRMAN FELT: Mr. Simon, the request will be noted. For your information and that of the members of the committee, there are before us up here at least—possibly they've been distributed—at least two more very far-reaching proposals. And so that—if we were going to duplicate one of these for distribution, we'll have to duplicate three of them. They go, each of them, into the matter of appropriate legal proceedings, both against government and against private individuals. So we will probably be recessing for lunch in about six minutes and go back to this matter when we are completed with that recess. It doesn't look as though we'll be able to get to a vote before that time, but we might.

For what purpose does the gentleman, Mr. McNeil rise?

DELEGATE McNEIL: One minute, Mr. Chairman, to clarify the problem that Delegate Harper was having.

CHAIRMAN FELT: The gentleman, Mr. McNeil.

DELEGATE McNEIL: Delegate Harper's concern dealt with the issue of the citizen right to participate and the citizen right to sue. The committee recognized the controversial nature of this section and has set it forth as a separate proposal. It is on page 16 of the committee report. The right to sue, the right of the citizen to participate, whether he can sue anyone or just the state, we felt was a separate proposal and did not feel with the specific subject of the public trust, which is before the committee now. I would like to make one comment to Delegate Arbanas. Delegate Arbanas, the majority committee did not exclude private property. Don't misunderstand that. Read subsection 3 very carefully. The proposal mandates the Legislature to prevent degradation and to prevent unreasonable depletion. Now, that includes private property. It was not our intent to exclude it. The only question to be determined is the method and whether, under Delegate Cate's proposal, the environment, including land, ought to be held by the state in trust for the benefit of all the people. And that is the real issue in that amendment.

CHAIRMAN FELT: The delegate, Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman. I rise in support of Delegate Cate's proposal. I think the question again comes down whether or not we want effective environmental provisions in this Constitution. If we do, we should vote for it; if we don't, we'll vote on it and our children and grandchildren will live with the results of our decision today. I don't think we should delude ourselves by thinking that if we put in the provision in Section 1 as it was, that the state shall maintain an environment which we all say we want to be clean and healthful but we're too timid to say we want clean and healthful in there because it may cause some problems later. I think that it was a tragic mistake to vote that down. I think this is the greatest example of seeing the emperor's clothing, for people to say that it was stronger not to use the positive language describing what type of environment we all say we're for, but no one wants to be explicit in the Constitution. I would support the proposal of Mr. Cate. Thank you.

CHAIRMAN FELT: Does the gentleman, Mr. Cate, wish to close?

Mr. Brazier, do you wish to speak on this?

DELEGATE BRAZIER: Yes, Mr. Chairman. For your information, I want to comment at length and read a little scripture. And I thought I ought to call that to your attention in your organizing the work of the day.

CHAIRMAN FELT: Yes. (Laughter) Does anyone else feel they have something to say that is not going to take so long?

The delegate, Mrs. Eck.

DELEGATE ECK: Mr. Chairman. I was really sorry, I guess, when public trust came up this morning, because I thought that we had decided against it. But since it is on the floor, I feel compelled to get up and speak in its defense. I think that it has been greatly maligned—and greatly misunderstood. Before the Convention opened, this concept was explained in what I thought was a relatively simple way of looking at a situation which we already have, which was really put into effect last year by the Environmental Quality Act, which has been cited before. It states simply that the quality of our environment is held in trust and that our government is responsible for maintaining the quality of this environment. They already, really, have that responsibility. They maintain it for the benefit of the people, and I don't see anything really that startling in it. I think the red herring came in when we got in the idea that, because they were holding the environment in trust,—really the quality of the environment—that meant they were going to take over all of the land in Montana. And this is really—it's really ridiculous, I think. I don't think it was anyone's intent. I don't think it's implied in this, but I do feel that because it has been so widely discussed and there has been so much feeling engendered on it, that it has become—pretty much become a useless concept to us. I think a good example of this was the radio hearing we had on

Monday night. I counted 12 calls from the Hamilton area. And those of us who have been sitting in committee pretty much knows the source of this thinking. None of them really directed themselves to the subject of the broadcast, which was the Natural Resources proposal. They had been told that—I think—several times I heard the statement, "This is interfering with the basic rights of Montana, and we ought to let the Legislature do that." I also kept hearing the statement that we are making stool pigeons of the people by asking them to report on their neighbors. I don't think anything like that has even been mentioned, but I do feel that there are so many groups out working to malign the idea of public trust that, even if this body could come to a good understanding of what at least my understanding of its intent was from the beginning, that we would have a very difficult time selling this—and I say selling—to the people of Montana. And I think that we're far better off in stating our purpose and our policy for the state in different languages and in different words. I think we've all been balled up on words, and the latest one—if you want something to think about during lunch—I've talked to four lawyers in the last hour who assure me that the word "enhance" means to enlarge. And we might find that when we're saying we're going to enhance a polluted air, that we are really dedicated to increasing the pollution. Now, give that one a thought. Thank you.

CHAIRMAN FELT: The next person I'm going to recognize will be Mr. Eskildsen; but since Delegate Cross and Delegate Robinson may not know, in detail, what each is working on, they might contact each other during this recess period.

The gentleman, Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman. Before I move to recess, I would like to remind the delegates that when you have an amendment placed on the desks, if you'd put your name on it, it gives the delegates a chance to find it—especially where we're getting a half a dozen of them all at once. Just your name on it—really help a lot. I move we stand in recess until 1:30 this day.

CHAIRMAN FELT: All those in favor, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.
(No response)

CHAIRMAN FELT: The Ayes have it.

(Convention recessed at 12:11 p.m.—reconvened at 1:42 p.m.)

CHAIRMAN GRAYBILL: The committee will be in order. Mr. Vermillion, will you please close the back doors. For the journal, Mrs. Acher, will you please show Mr. Kelleher excused. Mr. Kelleher is ill today. Very well, the Chair understands that we're still debating Section 1, sub. 1; that the initial section was moved; that Mr. Cate has an amendment to the effect that "the State of Montana shall maintain and enhance a clean and healthful environment as a public trust. The beneficiaries of the trust shall be the citizens of Montana who shall have the right to protect and enforce it by appropriate legal proceedings against the trustee." Is there further discussion on Mr. Cate's amendment?

Mr. Brazier.

DELEGATE BRAZIER: Mr. Chairman, fellow delegates, I speak to you as a member of the Committee on Natural Resources and Agriculture, and I want to assure all of you that everybody in that committee was most vitally concerned about what we can do to make progress towards the protection of our physical environment. I do think it unfair to suggest or imply that, because some people viewed one approach as more favorable to another, that they were opposed to enhancing the environment. For what it's worth, my great-granddad was the person Fred Martin referred to as having suggested that we make Yellowstone Park a national park. For what it's worth, I knew what the word "ecology" meant 10 years ago, and I don't think many of you in here can say the same thing. For what it's worth, I pledged to the Montana League of Conservation Voters that I would support an environment proposal that they suggested and set forth. I think most of you did, too. In my own mind and conscience, I think I have gone far beyond that pledge in proposing to this delegation something that I think is an action—constitutional proposal which will stand attacks under the federal Constitution, which I doubt whether the Illinois proposal will do under certain circumstances. Now, we had a choice of two ways to approach this, if I may distill it down. We had a choice of the public trust, which I will comment on in more detail, and we had a choice of the police power concept, which is the way our government has worked since its inception. Now, to the distress of some people, I have to favor the police power concept. I have to favor a type of government that passed nine major ecology and environmental bills just one year ago in this house, when nobody knew what the meaning of the word "ecology" was, 10 years ago, and when the coalfields were being reexploited as recently as 6 years ago. I have to go for a police power approach, which does, and did in the last Legislature, create citizens' rights by the Uniform Administrative Procedures Act. Now, what the majority proposal does for you—it may be a little hard to grasp for some laymen—it takes out anything that leaves to the Supreme Court interpretation, as much as we possibly could do it. Now, I think each one of us on that committee tried his hand at at least 20 different proposals, and none of them worked; and what we're involved [in] here now is just an enlarged replay of the same frustrating attempts. Keep that right to interpret out of the hands of the Supreme Court, where it can be locked in forever without being overturned by the Legislature. Secondly, what we did is mandate the Legislature to take immediate, forceful action. What they did isn't enough. We want more. And, finally, what we did is tell the Legislature, "You create remedies for the state agencies and for the persons against state agencies and against persons." And all this, I assure you, will withstand attacks under the federal Constitution, and I think will also withstand attacks when we go to the polls on June 6th. To some people this is not enough. This trust proposal has been forwarded. I think it's grasping at straws, under emotional circumstances. And we're all emotional; but I don't think you draft good statutes, you certainly don't draft good constitutional provisions, when you are emotional. Although a trust concept has been employed, as Mr. Cate represents, at various times and various places, it does not bring with it the body of jurisprudence that the police power concept does. We have been favored and had called to our attention six or seven cases decided by courts of record in the last hundred years, and most of those are dealing with shorelands. So we are asked to embrace this concept in a constitution and expand its use, although we have had no real inspection of how it applies, either in the statutes or in other constitutions. And I submit to you that if you were buying a used car, you would certainly want to inspect that commodity a lot more than what you're being asked to do with a trust concept in this case. One thing that we got some of the witnesses to admit was their intention—was that a private citizen, a stranger to the property, if you will, could walk in and try to superimpose his subjective opinion of what a better use or a better environmental application of the property was than the actual landowner. Consider that. That exalts to a higher station the right of a stranger to dictate the use of the land than the person who has had the land and, [in] many cases, had it in his family for several generations. It also permits a stranger to sue and possibly harass, maybe justified, but at any rate to anticipate what the landowner might do to the property without any real manifestation of usage. And I submit also there is no restriction on use of property in these proposals. It applies to snowmobiles, guns, pipes, cigars, how you paint your house, and any other application that the mind can conjure up. Many of these proposals have asked that we include in the Constitution the right of a citizen to enforce. Now, as I take that, it means that all a citizen has to do is file suit, and the court has no discretion. He's got to enforce that citizen's opinion. I submit that that's going too far and what it creates is a government of men and not a government of laws. And, as several of the delegates have pointed out, the actual, practical effect is you're going to socialize property—let me backtrack a little bit. One of the witnesses, a college professor, said what he had in mind was that a citizen could not only sue the property owner, but the citizen could sue the State of Montana to force the State of Montana to condemn the property if he didn't like the use of the property. He didn't know where the money was coming from, but he had that in mind as one of the usages of the trust concept. Now, I submit to you that that is going to be a form of socialism, if not anarchy, and it's certainly going to depreciate the value of any land that a property owner has in the State of Montana, because he'll never feel safe. I don't think he could get insurance on it, and it's going to undermine the tax base of the State of Montana, and it's going to deprive us of the revenues to run our government—and including the policemen that these people want us to provide to protect their environment. So I ask you to think again about the implications of what is proposed here, bearing in mind that what the draftsman tells you he thinks this means is not necessarily what the Supreme Court of the United States or the Supreme Court of the State of Montana is going to think it means once it has a chance to look at the subject. Now, just so there's no mistake, I'd like to call to your attention something that we on the committee were favored with by a strong environmentalist—and, believe me, I'm sympathetic with them. The only problem I have is a solution to the problem. This man wrote us, urged us to take action. We're trying to take action. He submitted some literature for our edification, and I'd like to share some of it with you. I quote from a column that was printed in the *Missoulian* on February 13, 1972. It is taken from a *New York Times* service column by Anthony Lewis. The following extracts are in this enclosure, and this is submitted by a person who is very concerned about enhancing our environment. It says, "Leading ecologists say that we must adopt a policy of no net increase in capital investment from now on. Only matched depreciation of capital. But if the United States has such a policy, how could the manufacturers compete in the traditional way of more productive machinery? Would it not follow that new forms of social control would have to be imposed on production, on marketing, on advertising? And how would we be squared with the ideas of our freedom? Merely to state such problems is to make one thing evident, the complete irrelevance to most of today's political concerns." I submit to you, ladies and gentlemen, that this man is very candidly stating the implication of what the trust concept is. It is a form of socialism, and I want to call it to your attention because I don't want anybody to walk out of here, after having voted on these provisions, and say, "I didn't understand the implications of what was said." Don't let that happen. Now, we're all trying to look ahead, and I agree that it is possible in the foreseeable future that maybe all property in the world will be socialized. A hundred years from now, 50 years from now—I don't know. But I submit to you that that can evolve in the orderly course of events through out present form of governmental structure and without the necessity of exalting strangers' rights to a higher station than those rights of existing property owners. I'd like to state the proposition in another way. Maybe you've noticed I've followed somewhat along with Mr. Holland's position—for better, for worse. I agree that I am trying to be a practical politician about getting this Constitution through. Now, I know some of the younger people will recognize when I say I'd like to paraphrase the words of Darrell Royal. You recognize Darrell Royal is the highly successful football coach of the University of Texas, who has probably won more games in the last 10 years than any other coach, and he is probably the dean and the chief exponent of what we call "ground attack football", as opposed of throwing the forward pass. Now, Darrell Royal says, three things can happen when you throw a forward pass—

CHAIRMAN GRAYBILL: Mr. Brazier, let's not teach them football, let's stay on Natural Resources.

DELEGATE BRAZIER: —Mr. Chairman —two of those things are bad. Now, four things can happen if you adopt the trust concept, Mr. Chairman, and three of those things are bad and none of them are progress. Number one, if you adopt a trust concept here, I think you've driven the last nail in the coffin and you're not going to get any progress out of this Constitutional Convention, and that's bad. That isn't enhancing our environment one iota. Bad thing number two, you're going to get a case involving a big company, and you can bet it's going to the U.S. Supreme Court, and I'll bet you whatever resources I've got and my pure physical environment that that U.S. Supreme Court is going to hold this concept in violation of the federal Constitution, thereby rendering it a nullity, and that's bad and that's no progress. Thirdly, you can get the wrong case before our present Supreme Court—and remember, we got it locked in the Constitution now, the Legislature doesn't get a shot to overrule the Supreme Court if we're wrong, and they can interpret it in an unfortunate way; and you have made no progress and that's bad and that's not what you want either. Now, some of us throughout this Convention have tried to tell you, rightly or wrongly, in our opinion, how we think we can make progress on all matters. You cannot cram your theories down the public's throat; they won't buy it. Lawyers have commented on this, legislators, farmers. We had Mr. Metcalf come forward; he wouldn't buy the trust concept. We had Mr. Lindbergh come forward; he wouldn't buy the trust concept. Mr. Darrow, who is probably the foremost champion of environmental controls in Montana, backed off of the trust concept, but everybody keeps hanging on. And up in our committee room, we had a sinister-looking book setting on the table and everybody said, "But Professor Sachs says this", and "Professor Sachs says that". Now, I didn't have time during the rush of our deliberations, but I finally did get a chance to look at what Professor Sachs says; and I want to share that with you, if you will. And this is the scripture reading that I was talking about, and I'm going to read a scripture—this is a scripture reading by a heathen, I guess you would call it.

Now, I must confess that I opened this book expecting to find some firebrand socialism, how we got to turn the government over to the people right now and don't let anybody operate property any more, and I must confess that I did not find that. I found a friend that I think I understand and can communicate with, and I think he takes a reasonable approach. Contained as an appendix in this book is this much bandied-about Michigan statute, which was drafted under a constitution like we got now and not as strong as the one your committee is suggesting to you. This went into effect 14 months ago, and we've had 35 cases in Michigan, none of which have been adjudicated by the Supreme Court, two of which have been decided as frivolous. And maybe that's right, but I'm going to turn this book over to Mrs. Jean Bowman, the watchdog of the attorneys here and a friend of the League of Women Voters, as soon as I'm through with it, and I want her to check me and see if I've misrepresented anything to you. Now, what Professor Sachs says, and he's a law professor at the University of Michigan, is: we're having a lot of red tape in bureaucracies, and we ought to do something about that if we are going to move ahead effectively to protect our rights in the environment. He's mostly concerned about these real estate developers moving into a slough and putting up a high-rise or something. But it's within the scope of what we're talking about, and his point is well taken, and what he says is: here's this trust concept that's been kind of laying dormant, not used enough, and what we've got to do is get into court and argue this as a theory. This is a legal theory, a hook to hang your hat on. And when you go to court, Mr. Lawyer, you tell that judge that we've got a trust here that we've got to protect. And then he says, "One way to motivate and activate everybody is, let's get a statute that gives people the right to get in and tackle these agencies." Now, there's a friend. I go for that, and I go for the trust concept in its place, which is in court, and I'm going to grab it if I ever get a case. Okay, I want to tell you some of the features of the statute.

CHAIRMAN GRAYBILL: Mr. Brazier, the Chair would like to inform you you've spoken 15 minutes. I will not cut you off, but I want you to realize what you've done.

DELEGATE BRAZIER: Mr. Chairman, I have sat here with great restraint through two weeks of debate, and I think I'm overdue on this one.

CHAIRMAN GRAYBILL: You go right ahead. I just want you to realize you've used 15 minutes so far.

DELEGATE BRAZIER: All right. Thank you. I'm not going to burden you with the statute. It only uses the word "trust" three times, which is less than our environmental policy statute in Montana does now. It gives a citizen the right to sue for a declaratory or injunctive relief. It imposes upon him a bond for the protection of the party sued. It raises as a defense that there is no feasible or prudent alternative to the use that the property owner is making of the property. It creates other defenses. It lets the court review the validity of the administrative ruling under which the action is brought. Now, that's reasonable standards and controls, and that's imposed by the Legislature, and that's where it ought to be. And we can do that in Montana, whether we adopt the majority plan or don't adopt any at all. Now, finally, we get to the scriptures, and then I will sit down, Mr. Chairman, thanking you for your time. Saint Sachs, the pied piper of the trust doctrine, in his book entitled *Defending the Environment*, did have a few comments upon the applicability of the trust doctrine in constitutions. If you bear with me, I will attempt to enlighten you. "A final word about environmental declarations of rights in the Constitution is needed before leaving this subject. There is an important and insufficiently understood distinction between a declaration of the right to a decent environment appearing in a statute and one appearing in a constitution. A right with constitutional status does indeed create the opportunity for its enforcement in the courts, but it also—and herein lies the danger", says the author—"gives courts ultimate authority. That is, an environmental right declared by the courts as a matter of constitutional law cannot be overruled by the Legislature. By contrast, a court enforcing a statutory right, even though it may have the same wording as a constitutional provision, can always be overruled by subsequent legislation." A court enforcing a statutory right can always be overruled by subsequent legislation. Now, you may think that this is a lawyer's trick and a little bit of sophistry and chicanery, but that isn't all he says; and if you'll bear with me, I'll go on to finish out his thoughts on the subject. He says, "This distinction has great implications, particularly in the light of American legal history. It is worth recalling here that in the pre-New Deal era, a reactionary Supreme Court invalidated a good deal of important and needed legislation, thus provoking a grave constitutional crisis that abated only when one member of the court finally changed his position. It was this event that produced the bon mot, 'a switch in time saved nine.' We ought not to create the potential for such crises, remote as they may seem today. A court, even with the best motive, should not be authorized to function as an environmental czar against the clear wishes of the public and its elected representatives. It is not necessary to take such risks. Today, both state and federal legislatures have the authority they need to protect the environment. Except in rare instances, legislatures need no additional constitutional authority to enact environmental protection laws. A statutory declaration of rights can open environmental matters fully to judicial attention but still leave ultimate decisionmaking power in the hands of the elected representatives of the public. While the theme of this book has been a plea for greater judicial intervention, it should be eminently clear that our goal is to create additional leverage for the citizen; to add to, not diminish the opportunities for redress; to improve and provoke the democratic process, not to constrain it. Courts are powerful enough so long as they are unable to build a common law for the environment, remand dubious proposals to the Legislature, and declare moratoriums. Moreover, there is a fundamental difference between almost all environmental problems and the issues to which the Bill of Rights so often used as an analogy is addressed. Essentially the Bill of Rights deals with the problems of permanent minorities and with government oppression of unpopular individual groups. For such problems, where the danger is tyranny by the majority, some foil is needed to the majoritarian rule that governs the legislative process. Giving ultimate constitutional authority to the courts in the matter of free speech and the rights of the criminal defendant or the religious dissenter is most appropriate, but environmental questions are preeminently problems caused by powerful and well-organized minorities who have managed to manipulate governmental agencies to their own ends. For such issues, the need is for a forum that can help to even the political and administrative leverage of the adversaries. If the equalization, per se, can be accomplished judicially, the courts may then properly withdraw and then leave the ultimate decision to a truly democratized, democratic process." So sayeth Saint Sachs, chapter 11, page 237. Mr. Chairman, fellow delegates, I ask you to heed the words of your own prophet. Don't let a bad interpretation get locked into a future constitution. Let the Legislature do it. Thank you very much.

CHAIRMAN GRAYBILL: The issue, then, is on Mr. Cate's motion to put the public trust doctrine, as he states it, into Section 1, Article 1, of Environment. Is there further discussion? (No response)

Mr. Cate, are you ready to close?

DELEGATE CATE: Yes, Mr. Chairman.

CHAIRMAN GRAYBILL: All right.

DELEGATE CATE: I wish to thank Mr. Brazier for stating the company position. First of all, let's talk about the two words "public trust". Apparently a lot of people don't understand what those two words mean, and I don't know whether I'm going to change any minds here—and I'm not the most eloquent speaker in the world, but there's not a man here that can say that I am not sincere. The words "public trust"—"public" means the people. It means you and I; that's what the word "public" means. Now, "trust" is a well-defined term in legal terminology, and essentially it means that something is held by another entity for the benefit of others. For instance, by your will, you can create a trust. You can put money into a bank; the bank becomes a trustee, and the bank holds that money for the benefit of those people that you name as beneficiaries. That's a trust. In this case, the state is the bank; it's the trustee. The beneficiaries of the trust are the people, the citizens of the State of Montana. The term is that simple. It's that simple. Now, there has been some talk about taking private property. This does not take private property any more than the exercise of the police power takes private property. You can't burn a bunch of garbage on your land, even though that's your private property. You can't run a whorehouse on your land, even though it's private property. There's a lot of things you can't do with your private land, your private property, because they infringe upon the social good of the people; and that's been traditional throughout the history of this country—that we have the right to regulate this so-called "sacred" thing called private property. Well, you old people had better wake up, because the times are changing and if you don't get in step with the times, there's not going to be any time. We haven't got that much time to save our environment, and you'd better realize it; and if you don't realize it, you'd better start reading what the experts are saying about the environment. I don't mean to get emotional, because that's playing into the arms of the others, but I resent deeply the allegation that this is an attempt to take private property, private land, from the people and give it to the state, and I resent the accusation that this is socialism. Our system of consumption in this country has got to change. We've got the Beartooth Mountains over there, they're the highest mountains in Montana, and I think they're the most beautiful mountains in Montana, and I've been in those Beartooth Mountains many times. We've got five mining companies that want to go in there, and they want to take those mountains, they want to rip them wide open. They want to dig a pit 5 miles long and 3 miles wide. And once they've dug that pit and taken that soil and that land out of there and polluted the rivers down below it, it's not going to be there any more, and you can't put it back. You can't put it back once it's gone. You can't put it back. Yet there are tons and tons and tons of wrecked cars laying in junkyards all over and the company says, "Well, it's too expensive to reprocess those junk cars. It's too expensive to reprocess these reams and reams of paper." Well, let's make it more expensive to go into those mountains and tear them down forever. Let's make it more expensive so that those things can be preserved for my children and their children. Man has lived on this earth for 2 million years. In the last hundred years we've done more detriment to our world than was done in 2 million years. Now, how is man going to survive if we continue on the present course? How is he going to survive? Do any of you people fly? You know, you get up there at 12,000 feet, you get up to 12,000 feet, and you've got to have oxygen. There isn't miles and miles and miles and miles of air up there. There's just a thin layer of air, and you fly over these mountains from the west and you see this rim of pollution laying below the mountains, just waiting to come over into our state and to pollute our air forever. Something has got to be done, and this Convention has got to do it. We've got to respond to the people. The people want this; and if you put it to the vote of the people, they'll vote for it. I've sat here the last few days and watched, one by one, you people being taken out into the outer chambers and lobbied by the interests that are against the environment, and I can name you that have been lobbied. Well, it's time for us to decide who's running the State of Montana—the people who elected us here or the companies. It's that simple. Now, this provision that I've introduced here is a compromise provision. It takes away the right of a citizen to sue the private individual. It's moderated; it's watered down. But at least it's something that means something, rather than this majority proposal that means nothing. I think that I've said enough, and I apologize for getting carried away, but I really believe that we came here to do something for the environment. I really believe it, and I think that we have to rise above our selfish interests and vote for the environment to save it for future generations. We've got one of the last vestiges in our country, one of the last places that can be saved; and we shouldn't be satisfied with the standard that Illinois has or the standard that Michigan has, because they're already ruined. They're already ruined. They're never going to come back. But we can save Montana. We can make Montana a paradise in this country, and that's what we ought to act to do. And I urge you to support the public trust concept, which is nothing new—it's been around since 1842. Thank you.

(Applause)

CHAIRMAN GRAYBILL: Very well. Now, for the benefit of the galleries, we do not have demonstrations in the chamber, so please refrain from future demonstrations. The issue is on whether or not Section 1, as proposed by Mr. Cate, his amendment, shall become the statute—the Constitution or not. His amendment says: "The State of Montana shall maintain and enhance a clean and healthful environment as a public trust. The beneficiary of the trust shall be the citizens of Montana, who shall have the right to protect and enforce it by appropriate legal proceedings against the trustee." I trust we want a recorded vote on that; therefore I will open the vote. Those in favor of Mr. Cate's proposed amendment, please vote Aye on the voting machines; and those opposed, please vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, the vote is closed. Please cast the ballot.

Aasheim	Nay
Anderson, J.	Nay
Anderson, O.	Nay

Arbanas	Aye
Arness	Absent
Aronow	Nay
Artz	Aye
Ask	Nay
Babcock	Nay
Barnard	Aye
Bates	Nay
Belcher	Nay
Berg	Nay
Berthelson	Nay
Blaylock	Aye
Blend	Nay
Bowman	Aye
Brazier	Nay
Brown	Nay
Bugbee	Aye
Burkhardt	Nay
Cain	Nay
Campbell	Aye
Cate	Aye
Champoux	Aye
Choate	Nay
Conover	Nay
Cross	Aye
Dahood	Nay
Davis	Nay
Delaney	Nay
Driscoll	Nay
Drum	Nay
Eck	Aye
Erdmann	Nay
Eskildsen	Nay
Etchart	Nay
Felt	Absent
Foster	Aye
Furlong	Aye
Garlington	Nay
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Nay
Harlow	Absent
Harper	Aye
Harrington	Aye
Heliker	Aye
Holland	Nay
Jacobsen	Nay
James	Absent
Johnson	Nay
Joyce	Nay
Kamhoot	Nay
Kelleher	Excused
Leuthold	Nay
Loendorf	Aye
Lorello	Nay
Mahoney	Excused
Mansfield	Nay
Martin	Nay
McCarvel	Absent
McDonough	Aye
McKeon	Aye
McNeil	Nay
Melvin	Nay
Monroe	Aye
Murray	Nay
Noble	Nay
Nutting	Nay
Payne	Aye
Pemberton	Nay
Rebal	Nay
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Aye
Romney	Aye
Rygg	Nay
Scanlin	Nay
Schiltz	Aye
Siderius	Aye
Simon	Nay
Skari	Aye
Sparks	Nay
Speer	Aye
Studer	Nay
Sullivan	Nay
Swanberg	Nay
Toole	Excused
Van Buskirk	Nay
Vermillion	Aye
Wagner	Nay
Ward	Nay
Warden	Aye
Wilson	Nay
Woodmansey	Aye
Mr. Chairman	Aye

CLERK SMITH: Mr. Chairman, 34 voting Aye; 58 voting No.

CHAIRMAN GRAYBILL: 34 having voted Aye, 58 having voted No, Mr. Cate's amendment fails. The issue is now on Section 1, subsection 1, as proposed by the majority.

Mrs. Robinson, do you have an admendment?

DELEGATE ROBINSON: Yes, Mr. President, I have an amendment, and if the clerk will read it—

CHAIRMAN GRAYBILL: Very well. Mr. Clerk, will you please read Mrs. Robinson's amendment which is before you on your desks.

CLERK SMITH: "Section 1. Environment. The public policy of the State of Montana is to achieve and maintain a high-quality environment which is clean, healthful and pleasant, for the protection and enjoyment of its people and the protection of its natural beauty and natural resources, including wildlife and vegetation. Each person shall have the right to a high-quality environment which is clean, healthful and pleasant, and the duty is to act in accordance with this public policy. Each person may enforce such right against any party, governmental or private, through appropriate legal proceedings, subject to reasonable limitation and regulation as may be provided by law. Signed: Robinson."

CHAIRMAN GRAYBILL: Very well. Mrs. Robinson's amendment, which is to replace, as I understand it, Sections 1, sub. 1, 2 and 3, is before you; and, Mrs. Robinson, you may discuss it.

DELEGATE ROBINSON: Yes, Mr. Chairman, members of the Committee of the Whole. The purpose of this proposal, all in one section, which will delete the present subsection 1, 2 and 3, has three major purposes. One, it gives you a statement of basic public policy, which is broad and flexible so that it will cover presently recognized forms of pollution as well as forms of pollution which are yet unknown or as yet unrecognized. Secondly, it gives you a statement of the rights and duty as individuals with respect to the environment. And, thirdly, it gives you an expressed right for citizens to protect the environment through appropriate legal action where the Legislature fails to act effectively. This last provision, I believe, is of critical importance. Although I would agree that the Legislature should act in this area, past experience clearly shows that our Legislature, other state legislatures, and Congress have not always done so. The present problems we have with our environment are the product of the inability or unwillingness of legislatures to recognize environmental problems and to take proper corrective action. The problems that this section deals with, and I do not feel the majority report deals with, are these. We have discussed subsection 1. We have stated that the State of Montana will maintain the environment. What does that mean? Of course, we will maintain the environment. We will maintain some kind of environment. There's no other way to go. Section 2, we provide the Legislature must provide for the administration and enforcement of this duty. Well, I think this is unnecessary. The Legislature already has inherent power to act in regard to the environment. We do not mention the court in this proposal—in the majority report, so if the Legislature does not provide for this, what access do we have? There is no way to enforce such actions, for no one can require the Legislature to act in a certain way in regards to the environment or any other matter. Section 2 also can be construed by the Supreme Court or by anyone to delegate exclusively to the Legislature the power to deal with the environment, to the exclusion of the courts. We would be in a much worse position than we are now. Subsection 3 provides that the Legislature must provide adequate remedies for the protection. I talked to Mr. McNeil, and his intent in this was to allow the Legislature to set up access to the courts to sue, but it does not say that. It says "adequate remedies". The Legislature could conceivably, and perhaps they would, say that they have created an environmental quality council and the adequate remedy to protect your environment is to file a complaint with that. That may be an adequate remedy. This further puts the realm of environmental control in terms of the Legislature, to the exclusion of the court. It seems to me that what we are dealing with here is something that is not a new thing. The League of Conservation Voters sent out a questionnaire in November —or end of October, when we were all running for Constitutional Convention. At that time, a majority of the members of this body clearly indicated that they would support an environmental provision similar to the Illinois Constitution. This provides, as does my proposal, a statement of the policy of the state and the right of the individual to appropriate legal proceedings to enforce that right. This is all that the section that I have proposed to you does. I think the big objection to this, and to the whole concept of citizens being able to sue, has been the fact that, in Montana, you already have standing to sue in terms of the environment. In many instances this is true. We have the traditional common law concepts of the three ways whereby we can sue—negligence, nuisance and trespass. These were not implemented in regards to the environment but have been used in that regard. But they do not really effectively deal with the problem, because to be able to sue under these three, you have to have been able to prove that there were actual damages, either monetary or physical. I contend that if you're really trying to protect the environment, you'd better have something whereby you can sue or seek injunctive relief before the environmental damage has been done; it does very little good to pay someone monetary damages because the air has been polluted or because the stream has been polluted if you can't change the condition of the environment once it has been destroyed. One of the problems has been frivolous lawsuits. The case—the States of Michigan and Illinois; you've heard them millions of times—I hate to bring it up again, but the claim of frivolous lawsuits has simply not been justified. I think the last sentence of my proposal—"subject to reasonable limitation and regulation as may be provided by law"—is a clear guarantee and a safeguard against these frivolous lawsuits. What Illinois did to implement this section in their Constitution, they enacted the Environmental Protection Act, which set up standards by which the citizens could legally sue another person or a governmental agency. It seems to me that this should be probably the least consideration, because it simply has not worked out that way. I would submit to you the other problem and concerns with the private property aspect of it. It seems to me that if a few frivolous lawsuits do occur and that a few frivolous lawsuits is the price that we must pay for adequately protecting our environment for ourselves and future generations, the choice should be clear. The citizens should not be helpless to protect themselves and the environment.

CHAIRMAN GRAYBILL: Very well, is there discussion on Mrs. Robinson's amendment? Mr. Skari.

DELEGATE SKARI: Mr. Chairman, I support Mrs. Robinson's amendment. I think we're spending quite a little time on this, and yet I think it's very important that we do spend some time on this. I think we should try to imagine here that we could look down upon this earth as if through the eye of a camera, the kind of a camera that is equipped to take a series of time exposures over a long period of time. I think that this would give us a dramatic example of the changes which can take place, given enough time—say, 50 years. It doesn't happen suddenly; it happens rather slowly. It's sort of like a thief in the night. I think Mr. Lindbergh sort of pointed this out with his view from the air. He pointed out he had been flying for 50 years and he had visited Montana several times. He noticed the changes that were taking place. I'm sure this is much more dramatic in other areas. Fifteen years ago, I visited the Santa Clara Valley in California, and I visited this valley again about a year ago and I saw the dramatic change. And it was not for the better. I think we're going to have to look ahead to the same sort of problems, the same population growth in this state. I think we could consider the Gallatin or the Bitterroot and the Flathead—some of these beautiful valleys we have—and what would happen to them if we do not take some action. I would like to point out to you that today is the first of March. It's a—to me it seems more than the 21st when the first of March rolls around. It's getting towards spring. I suppose they're probably calving down around the Powder River now. The grass on the lawn is starting to green up a little bit, and it's beginning to look like spring. This is the time when the earth renews itself. I suppose we take it for granted, but we should say, really, my God, it's happened! We should be extremely grateful for it. But I would submit to you that it doesn't happen all over this earth, even at this present time. Mr. Lindbergh pointed out the island of Java. What has happened there, it looks like as if a giant hoard of locusts had crept over the island. I think we are facing a problem here that man has not faced before, that we simply have the technical ability to destroy ourselves. I think, then, we have to face up to this problem, and possibly we can do something here constitutionally. I think we should combine two basic rights—the right to private property and the legal right to protect what is most valuable to us, and I say to you that this is not incompatible. I think this delegation is inclined to protect our environment. I think this is the general feeling. I think I support Mrs. Robinson's proposal because it is very clear and simple and, I think, the best way to do this. It does three things, which she outlined. It sets the tone of public policy; it defines the rights of citizens; and it provides for the enforcement of this. Yet it allows the Legislature to set certain guidelines and procedures. For these reasons, I strongly support the amendment by Mrs. Robinson. Thank you, Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mrs. Speer.

DELEGATE SPEER: Mr. President, I wish to support Mrs. Robinson's motion. She has given the reasons for this proposal very well, and I won't repeat them. I simply want to add that I feel, as she has said, that the real heart of this proposal is the last sentence, which calls for the right to sue. If there were not the right to sue persons or parties, I think there is no guarantee that the public policy or the individual right to a good environment is to be preserved. I came to this Constitution with a deep concern about many of the core areas of the Constitution, and I still have these great concerns. I am very much interested in improving local government. I am serving on that committee. But I had come to feel that this is the one great issue before this Convention. I think probably that local government can muddle along for 25 or 30 more years, much as I would hate to see it do so without reform, but I do not think we have many years in which to remedy our—and save our environment.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President [Chairman], I rise in support of Mrs. Robinson's substitute motion. Mrs. Robinson, in her speech, referred to filling out of the questionnaire when we were all running for the Constitutional Convention. I, too, filled out one, and when I came to that question about what we would do—or how I stood on the environment—putting something into the Constitution—as closely as I remember, I said something like this—that I was not in favor of putting an environmental protection clause into the Constitution which had no meaning, which would be used to simply lull the people that they had some protection when they really didn't. And I believe that Mrs. Robinson's substitute motion gives the people the right to do something about their environment, and I support it.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Mr. President [Chairman], fellow delegates. I stand in support of Mrs. Robinson's proposal. Maybe you haven't noticed, but I have a funny accent. I come from Massachusetts, and I remember some of the greatest times of my life were spent on the banks of Walden Pond. It was a great joy to hitchhike out there and spend time sitting beside Walden's cottage—it's no longer there, some of the bricks, the foundation are there—and dreaming. Well, I was back there this summer, and Walden Pond is no more. It is completely polluted, and there's only about half the water left. I love Montana; this is why I'm here. And I hope it remains the way it is today, because I want it to be like this for my children. And I think if you think of the best parts of Montana that you have known and hope that it remains the way it is, then there is only one way you can vote.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I support Mrs. Robinson's substitute motion. I, some time ago—quite a few years ago—adopted the test for what is proper for the government to do and what not, and that boils down to somebody else's philosophy—I'm sure I borrowed it—that the government exists for the sole purpose of doing necessary things for people that they can't do for themselves. Mrs. Robinson's amendment fits that bill. I think the members of this committee had better heed that spontaneous applause we heard a few minutes ago after Mr. Cate's spirited speech, and I'm happy and I thank God that my arteries aren't so constricted that an idea like this can't get up there. Thank you.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: Mr. President [Chairman], I'd like to submit that I think that as a society we have a weak sense of history and a weak sense of the future, an inadequate sense of the past and an inadequate sense of the future. And I'd just like each of you to question yourselves about your own children, your own grandchildren, and your own great-grandchildren, and I submit to you that we are using something right now that belongs to them. We're using their land, and we're using their air, and we're using their water; and we have no right to do this. We have no right to take it away from them, and I think that this amendment would help deter the course that we are now taking and will give us—will insure for them something that they have every right to.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: Mr. President [Chairman], fellow delegates. First of all, I'd like to observe that, sometimes in the course of this debate, it may have seemed that we were against each other. Really, I get the impression, and I should say it, that all of us are looking for a strong article. Our differences, I think, come from just how to do it. I feel that the—Delegate Robinson's proposal is a fine compromise that should be looked at very carefully by those who have been on one side or the other. It has some very distinct advantages. First of all, the first advantage I liked, that I think that in the last sentence the safeguards that many people worry about are much clearer than any article I have seen so far. The safeguards are there, and they're well put. The second advantage of the amendment, it seems to me, is the fact that it spells out very clearly that each person has a duty. Other articles that we've seen perhaps concentrate on the government or some agency, whereas this talks about each person having a duty, and that's very important. And, lastly, for my own self, anyway, I like the fact that it goes beyond just the clean, healthful and protection area. That's pretty utilitarian. The thing I like about Montana is more than just "clean". I like the beauty of Montana, and I like it to be pleasant. And I think those things take us, perhaps, into some philosophical issues but more beyond just the clean and the safe.

CHAIRMAN GRAYBILL: Mrs. Reichart.

DELEGATE REICHERT: Mr. Chairman, would my seatmate, Mrs. Robinson, yield to a question?

CHAIRMAN GRAYBILL: Mrs. Robinson?

DELEGATE ROBINSON: Yes, I will.

DELEGATE REICHERT: My question relates to the standing to sue. Do you feel an individual should suffer actual damage before being permitted to sue?

DELEGATE ROBINSON: No, I don't, because—Mr. Chairman. I don't, because I feel you are not doing anything to protect the environment. I know a lot of attorneys are very worried about this, and I did some research to see what court decisions had been rendered on this very problem of standing to sue without proving actual monetary or physical damages, and I can give you about 10 cites, both from the Supreme Court—the U.S. Supreme Court reports—and from the federal reports, indicating that both federal court and the Supreme Court have held that a person does not have to be monetarily or physically injured on behalf of environmental degradation to sue; they simply may have an interest in the environmental degradation. I think that this is certainly the trend that the federal courts are taking. I can see no reason for us to wait for Godeau on this and linger behind, too. There is—on all of the federal cases, there's a definite trend that you do not have to be injured or have monetary damages to be able to sue.

DELEGATE REICHERT: Thank you. May I speak now, Mr. Chairman?

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: I wish to speak in support of Mrs. Robinson's proposal. During the last session of the Legislature, there was a bill introduced—House Bill 33—and if you read the House Journal of the last session, you will find that this bill did not get very far. These people who say the Legislature can take care of this adequately, I feel, are wrong. I think that our Constitution must contain a provision to protect our environment. I receive more mail in this area than any other, and it's really a very, very touching situation when you receive so much mail from children. I have some mail here from some doctors in Great Falls, and they state: "Consider thoughtfully the future of Montana and specifically the hopes we have for a quality environment for our children and grandchildren." I think we'd be remiss in our duty at this Convention if we at least did not do what Illinois did and our friends, the North Dakotans. I'd like to read you their section—part of their section on environment: "Each person has the right to a healthful environment and may enforce this right against any party, governmental or private, through appropriate legal proceedings, subject to reasonable limitations as the Legislative Assembly may provide by law." This is very similar to the proposal Mrs. Robinson has submitted. I really contend that we're just as good as the people of North Dakota, and I think that, all jokes notwithstanding, that the least we can do is come up with a provision as good as that of the North Dakota Constitution. I really plead with my fellow delegates to support this proposal of Mrs. Robinson.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, I wonder how many delegates have read—well, in one page—it appears on page 17—which is the minority proposal on the right to sue. It kind of seems increasingly apparent to me that a lot of people have not read what is contained in the report. The reason that the majority did not support a separate section saying "the right to sue", the paragraph 3 of our report states, "The Legislature is directed to provide adequate remedies for the protection of the environmental life-support system from degradation and to provide adequate remedies to prevent unreasonable depletion of natural resources." Now, to those of us that studied what we were doing for a long time before we did it, we felt that this, in itself, is a lot stronger than, certainly, the proposal we're looking at right now. If all you are wanting to add is a difference in wording on the right to sue, I would suggest that you would do it when we get along to the minority report number 4, and I notice Mrs. Cross has a slightly reworded one. I ask you to look at Mrs. Robinson's proposal and look at the three sections of the majority proposal by the committee and read it, without paying too much attention to how beautiful the words sound but what their meaning actually is, and then vote your conscience.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, will Delegate Robinson yield to a question—or several questions?

I have been, for some time now, reviewing the Environment Article of the State of Illinois and also that from the State of North Utopia—or, I guess, North Dakota—it seems as though it must be Utopia, the way we are quoting—and I ask you why you have added the language, which does not appear in either of those two provisions, "and the duty to act in accordance with this public policy"?

DELEGATE ROBINSON: I added that language because I feel that it is a valuable addition, that people do—it's not only a right of the citizens of Montana to have a clean environment, it is also their duty to try to maintain that environment. And I submit that where rights exist, corresponding duties also exist; and I think that it was just an attempt to recognize that fact.

DELEGATE MURRAY: Mr. Chairman, if I may inquire further. Mrs. Robinson, did you find any precedent for that type of duty anywhere else?

DELEGATE ROBINSON: No, I did not find any precedent for this type of duty in terms of a constitutional provision.

DELEGATE MURRAY: Did you find any reference to duty, as you have described it herein, in any legislative enactment?

DELEGATE ROBINSON: Yes.

DELEGATE MURRAY: Where?

DELEGATE ROBINSON: There are several. Just a minute. The Environmental Protection Act that substantiated Illinois' constitutional provision clearly delineates also the duty as well.

DELEGATE MURRAY: Any other states?

DELEGATE ROBINSON: That's the only one I have right now.

DELEGATE MURRAY: Is it in the same language that you have it here?

DELEGATE ROBINSON: I don't know, Mr. Murray, if it's in the very exact same language. I think the word "duty", regardless of how it's construed, has a pretty definite meaning, and I don't know if it's the exact same wording or not.

DELEGATE MURRAY: The reason I'm asking you these questions, Mrs. Robinson, is so that the record will show your intent relative to them, and I would—I'm real concerned about your reference to duty. I can see the establishment of a right, but I'm concerned about the establishment of a duty; and I would appreciate it, since you seem to have done considerable legal research on this matter—and being a lawyer myself, I like to take the benefit of other people's research if I can—if you would please tell me what you think the impact of the addition of that clause in this statement means.

DELEGATE ROBINSON: I certainly think that the impact of it is kind of precedent to the last sentence of that clause, where I mention that each person may enforce such right against party. I think it amplifies the right to sue as perhaps also being a part of that duty. That duty is in protecting or causing the State of Montana, which we have established as a public policy, the right—the duty of each individual to see that the public policy of the State of Montana is protecting the environment, and perhaps the only way that a citizen may fulfill that duty is by bringing appropriate legal action in a court of law.

DELEGATE MURRAY: Now, then, let me ask you this. I think your reference to duty is well. Should I fail to sue somebody for a pollution problem, could you sue me because in the Constitution I had a duty to act?

DELEGATE ROBINSON: I can find no precedent for that type of litigation. I can find precedent for—on federal statutes and federal decisions whereby, if you were remiss in your duty to sue, I could also sue the person that you should have probably sued.

DELEGATE MURRAY: No, no; that's not my question, Mrs. Robinson.

DELEGATE ROBINSON: I understand your question. I said that I could not find precedent for that type of action. I do not know.

DELEGATE MURRAY: Then, is it fair to assume that we do not know what we are doing if we adopt this language?

DELEGATE ROBINSON: No, sir, I don't think it's fair to assume that. I think it might be fair to assume that you don't know what you're doing (Laughter) if you adopt this, but I don't think that it's fair to assume that I don't. I refer you specifically to Delegate Proposals 20 and 21 by Mr. C. B. McNeil, who also deals with the public policy of the State of Montana and the duty of each person to provide, maintain and enhance a quality environment for the benefit of the people. I would like to say, Mr. Murray, that if you are satisfied with this whole article without the duty business, the fact that you're satisfied with it would certainly—you know, I wouldn't get all that upset about leaving the duty out if I could get you to agree with that much. (Laughter)

DELEGATE MURRAY: Well, Mrs. Robinson, you probably aren't going to get me to agree to it anyway, but I am concerned about—Mr. Chairman, if I might address my remarks to the delegates and not Mrs. Robinson. You may be seated, ma'am. I am concerned about the establishment in the Constitution of a second level of duty, which this particular language causes me some concern about. I feel, through talking with Mrs. Robinson—I state this for the record—that her language, "subject to reasonable limitation and regulation as may be provided by law"—and she may object if this is not her interpretation and the intention—her intention with respect to the addition of that language—that that clearly means that there shall then be no litigation brought by or under this particular provision of the Constitution, should it be enacted, without the Legislature having provided the implementation for such litigation.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: I feel that I must speak now to further clarify the point Mr. Murray just raised, because, as far as I can determine by speaking to the Attorney General in Illinois, who adopted a similar provision in their constitution as what I'm proposing here, his statement does not really merit much consideration. The Attorney General in Illinois—their provision stated not that a person would not have the right to sue unless the Legislature took action. On the contrary, a person has the right to sue, the right to enforce his clean and quality environment and can do so without limitation unless the Legislature acts to limit it. This is a self-enforcing provision; and if the Legislature wants to limit it and restrict it, which they have already done in this state by the—in Title 69 of our present codes—then this would be appropriate. But it is not as Mr. Murray indicated, Mr. President [Chairman]. And while I have the floor, and I won't get up again, in reference to Mr. Gysler's remarks concerning the minority report and concerning the right to sue, I have read it. I have read it very carefully. I have concluded that it is probably—adds nothing and could be more harmful than good. First of all, you will recognize that citizens already have the right to legal recourse against governmental agencies that fail to carry out duties delegated by the Legislature. This right of judicial review is presumed even in the absence of express constitutional or statutory provisions. The State of Montana's Administrative Procedure Act specifically permits judicial review of administrative actions. The danger I see in that minority section was that it would seem to restrict the right to sue, as a constitutional matter, to actions against state agencies. This, taken in connection with the entire majority proposal, could well be a final nail in the coffin against the citizen's right to protect the environment.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: This is from the constitution of North Dakota, and I'd like to read: "Environment. The public policy of the state and the duty of each person is to conserve, develop and utilize natural resources—" and then it goes on. It has the word in there exactly.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I took a great deal of time on this subject this morning, and I'll not do so again. I know for sure that everyone here wants to protect the environment of Montana in the best way they can figure out. I am very appreciative of the fact that many of the delegates came to Montana because they like it better here than where they came from. Now, I'm a third generation here, and I still like it here. My grandfather had a pack string that he ran out of Helena, right where we are now—in 1868. And I plan to stay here. But you know, in Mrs. Robinson's proposal here, there's a lot of words that we battled for four weeks in committee, and I would like to ask Mrs. Robinson if she can define what these words mean: healthful, high-quality, pleasant and reasonable. She used healthful twice, high-quality twice, pleasant twice, and reasonable once. I hope, Mae Nan, that you can clear me up on this, because no one else has been able to in five or six weeks of debate up here.

CHAIRMAN GRAYBILL: Will you yield, Mrs. Robinson?

DELEGATE KAMHOOT: May I ask Mrs. Robinson a question, Mr. Chairman?

CHAIRMAN GRAYBILL: Will you yield, Mrs. Robinson?

DELEGATE ROBINSON: Yes, Mr. Chairman, I will yield.

CHAIRMAN GRAYBILL: Very well.

DELEGATE ROBINSON: I would first like to point out that these words were chosen for those very considerations: the fact that, in the majority report on subsection 1, you did not care to use any qualifying environmental phrases. As I pointed out earlier, these words have been used in other states' environmental protection acts and other state constitutions, as well as in the federal Environmental Protection Act. Now, I'm not going to stand here and define the words to you, because as you well know, these are subject to court interpretation. What we are asking the Legislature to do, and what they did in Illinois, when we say that people can sue on behalf of the right to protect the environment within reasonable limitations as prescribed by law, what happens is that the Legislature decides what ramifications are involved in a clean, healthy, high-quality environment—whatever you choose. If you will look at the majority proposal on page 3, you provide for unreasonable depletion of natural resources; you provide for adequate remedies. Now, you cannot tell me that the words "adequate" or the words "unreasonable" are any clearer in your proposal on page 3 than the words "quality" or "healthful" or "clean" are covered in my proposal. I will submit to you that litigation has been done on these words "clean" and "healthful". There are guidelines and there are standards to use; and I'm not going to attempt to tell you, you know, what these things mean; but I can guarantee to you that the Supreme Court will certainly be able to tell you.

DELEGATE KAMHOOT: Thank you, Mae Nan. Well, I still haven't found out what they meant, but I'm sure the Supreme Court will advise me if I contact them. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, the question is on Mrs. Robinson's amendment to Section 1. Is there further discussion?

Mr. Harper.

DELEGATE HARPER: Mr. Chairman, I submit to you that, as a Montanan, I know what my duty is in helping to preserve the environment; but unless we pass something like this, I will not have the right. Now, the issue is not so much on the duty as on the right, as Mae Nan has said. This, I think—finally, after all day's debate, we've gotten down to the issue. Here we have a clear statement of the rights of the individual, the right to have a high-quality environment. Secondly, the right to have the right to enforce the right to a high-quality environment. Now, we don't argue about having a treasure in this Treasure State. We've got a treasure in this Treasure State, as Mr. Cate said, that 2 billion people in this world would give almost anything to have; and I want the right to fight to protect this right for children like this little one upstairs here, for the young people, and for all these generations to come; and this is the only document we have before us that will give the individual this right.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: I rise in support of Mae Nan's proposal. I felt I could not vote for Mr. Cate's proposal because of the emotional connotations which it had already received in the press and in our state, but I feel that this proposal does carry, as has been stated well by many people, the things that we need to protect our environment and to assure that it will be adequately safeguarded. I feel that so much has been said already, but I would simply join in the statement that Rick Champoux made a moment ago—and I've always wanted to call him Breck Shampoo ever since the night of our happy time—but I am in Montana by choice, as are many other people. I could live on the east coast or the west coast. We have chosen, the last 14 years, to make this our home and hope to make it our home for the rest of our lives. I lived in Big Horn County in eastern Montana for five years, enjoyed watching the sunset on the coulees and the country that rolls down there with sagebrush and yucca. That's a very fragile environment, as has been pointed out before; when you tear it up to find the coal, something has to be done to make it a valuable resource afterward. It seems to me that much of what we are trying to achieve here is more definitely guaranteed by Mae Nan's proposal than by those that we've had before us. I would see it as a compromise move and yet a move that intelligent people of Montana could get behind and support. By the way, the people down there in the sagebrush country, where I lived for a number of years, are not without intelligence. Most of them married the school teacher, you know, after they homesteaded, and they know the issues and they're deeply concerned. Our Western Montana that we cherish so much and enjoy backpacking—I even complained to Charles Lindbergh when he was here that I didn't like him flying over it, once I got up there in that high country—that it really is a beautiful resource, and we don't want to see it destroyed. Too much would be said if I continued the conversation. It seems to me that this gives us the means. Let's enact it if at all possible. I support this motion.

CHAIRMAN GRAYBILL: Mr. Brazier.

DELEGATE BRAZIER: Mr. Chairman, fellow delegates. I lost my book, so I'm forced to be brief. I rise to speak just so you don't get the impression that I have compromised the basic principles of constitution drafting that I have been trying to brand on your minds. The exchanges between Mrs. Robinson, Mr. Murray and Mrs. Robinson and Mr. Kamhoot point out the problem. They have asked her to define words, and, of course, that may be an unfair question; but, you know, somewhere down the line, the Supreme Court is going to interpret those words, and then they're going to be locked into a constitution where nobody can get them out. And what that Supreme Court's going to do at that time, it's going to say, "Well, we're going to have to give effect to all provisions of our Constitution, including private rights and other citizens' rights that have been recognized over the years," and I'll bet you—I'll give you odds that they come up with an interpretation that sets you back, and then you have no remedy short of another constitutional amendment. This is all I'm trying to tell you. Don't leave it to interpretation. If you want citizens' rights, fine. I imagine that I'll be one of the beneficiaries to that particular result, but what you're doing here is you're playing Russian roulette to solve a problem and you've got three bullets in the chamber. Now, if you'll analyze this thing without emotion, I think you'll see that you have a better chance to make progress if you don't let somebody else lock it in.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Mr. Chairman, I rise in support of Mrs. Robinson's proposal. One salient fact forces me—compels me to go for the strongest environmental protection we can. My area, the Anaconda-Butte area, has a rate of lung cancer and emphysema which is twice that of the national average. These people who work in the mines and who work in the smelter cannot endure, Mr. Chairman, unless their environment—the working environment is cleaned up for them. For this reason, I will support Mrs. Robinson's environmental proposal and will also support any environmental proposal which I feel will give some aid to these poor working men who have spent their lives in the mines and the smelter.

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman, I hesitate very much to get up and raise any question about this article, because it will be immediately interpreted that I am speaking on behalf of a client of our office, which is the Hoerner Waldorf Company of Missoula. Well, I am not, because, fortunately that company is in the process of spending many million dollars to clean up its environment. It will match their health standards of the Air Purity Act of Montana, and it doesn't care less about what we do in this respect. But I have been impressed by the rather ready acceptance of all hands with the language that is contained in this proposed amendment, and I really wish that, simply for your own personal judgments, you would examine it more closely. The Illinois Constitution does contain the words "healthful", does contain "the right to sue". So, also, does the North Dakota document refer to "a healthful environment", and, of course, we all know that health is a very significant personal interest that we all have. This is what prompts Mr. McKeon's remarks. But incorporated in this proposal here, for the first time as I know of in any document in the country, are the terms "pleasant", "enjoyment", "protection of beauty", and "protection of wildlife". And I suggest to you—now, in addition to that, it says that each person has the right to a pleasant environment of this nature and each person may enforce that right against any party, governmental or private. The thing that prompts me to rise here is to caution all of you in your own personal considerations of protecting the environment—and it is in the same category as peace and war; I don't know anybody who really advocates war, and I don't know anybody who advocates a poor environment. I have a whole host of grandchildren whose future welfare in the environment I have just as much interest in as anybody else. But I am troubled here that we may be erecting in the Constitution a very fertile source of litigation for the benefit of lawyers and others, and these are the examples that trouble me; and if maybe this can be cleared up in this discussion, I would be very happy to hear them cleared. But I visualize that there are people who do not like to see logging going on in the forests, and I think that their right to have a pleasant enjoyment of the natural beauty of the forest, including vegetation, includes the right to stop logging. I think that those who like to see a lovely river valley or stream flowing in its natural state would have the right to attack any proposed residential subdivision or development, however well planned, that would somehow cover the land in that area with homes for people to live in, who, themselves, might like that area in order that they might get closer to a pleasant environment. In the course of our—well, after we got over here, I got a letter from a lady who lives down in the Nine-Mile country near Missoula, and I assume that the other delegates got the same—a Mrs. Bondurant, I think her name was. She was very aggrieved about the decimation of the wildlife in the Nine-Mile country, the disappearance of the deer and the other animals in the forest; and if she feels this way, she has a personal right against the State of Montana and the Fish and Game Department, I should think, to protest or to prevent the fish and game season which would allow the taking of fish or game in the Nine-Mile area where she lives. Now, I am not manufacturing wild things. I hope, in bringing up these things, because this language, as Mrs. Robinson very carefully tooled and it is very carefully all-inclusive and it very carefully gives an individual right to any person to enjoy and to have all these things and to enforce it; and I think I would be compelled to advise Mrs. Bondurant, for example, that this would give her a right that she would be able to enforce; and I think the qualifier in the last sentence there, about what the Legislature is going to limit or regulate, could never be interpreted by any responsible court as granting the right in the first instance, in the first two sentences of the Constitution, and then withdrawing it or qualifying it or limiting it in such a manner in the third sentence that it would, in fact, become meaningless and unreasonable. In other words, I think these rights as granted are, in effect, self-executing, as she pointed out; and all I want to do in this discussion is to point out to you that this is the most sweeping kind of statement that could be drafted and that it is pregnant with all kinds of possibilities for the future in Montana that are not found in any precedent. Of course, there is no precedent for this because the other constitutions do not go this far; and I feel that, as a responsible body, we should deliberate here on the extent to which we wish to enlarge the periphery of the environmental protection, because you can see here that we are creating rights by one citizen against another, crisscrossing all through the whole panorama of human activity. And I think we should be very careful before we get carried away with enthusiasm for doing the right thing and overdo it. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I shall be very brief, but I do want to respond to Mr. Garlington. If I understand—the burden of his song is that this is untested and untried, there's no precedent for it. As you all know, Montana was the first state ever to have a war conducted underground over in Butte. We were the first state to have a senator who was not seated in the United States Senate. Just once before I die, I would like to see Montana be the first state that did something good.

CHAIRMAN GRAYBILL: Mr. Rebal.

DELEGATE REBAL: Mr. Chairman, I resist Mrs. Robinson's proposal but not on the basis that I'm not interested in a strong environmental doctrine. As a member of the Natural Resources Committee, I would like to say that all of us worked very hard toward a strong environmental article. After hearing many hours of testimony, we were faced with many questions. For example, when it came to such things as the definitions of "clean", "healthful", "pleasant", "enjoyment"—and also, when it comes to "the protection of its natural beauty and natural resources, including wildlife and vegetation". We were asked such questions as: "Does it mean that, if you protect your wildlife, that you can't shoot a duck?" "Does it mean that, if you're going to protect your vegetation, that you can't mow down a blade of grass?"Now, these are the things that I see in this; and, believe me, I'd like to see a very strong environmental article, but I do resist Mrs. Robinson's. Thank you.

CHAIRMAN GRAYBILL: Mr. Siderius.

DELEGATE SIDERIUS: Mr. President [Chairman], I'll take a chance on cutting hay under this proposition and also take a chance on cutting grain under this proposal, but I think as a whole we have all been very, very neglectful. Now, I was born and raised in the Flathead; and we just took things for granted until all of a sudden, in 1963, I happened to be at a creek that was known as Ashley Creek and here come down—I have a picture of it—a fish, a dead fish come floating down the creek; and that's when I became concerned about this environment. And I think we're doing a disservice to our children and our grandchildren if we don't do something about this environment, and I would be for a stronger—I was one of those that was for public trust, but I will compromise and I will go along with Mae Nan's proposal. I think that will do what we think should be done. I thank you.

CHAIRMAN GRAYBILL: Now, the issue is on Mrs. Robinson's amendment to the environmental section, Section 1.
Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, I was hoping to join the parade of saints, but there have been many intervene since that—some of the enemy. I rise in opposition to Mrs. Robinson's amendment for the simple reason that for every hour we shall spend here discussing these issues, the committee has spent days. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Swanberg, you were up. Did you wish to speak?

DELEGATE SWANBERG: It seems to me there's a basic flaw in Mrs. Robinson's approach when she says that we all have a right to a high-quality environment. I submit that for, lo, these last 25 or 30 years, we have been participating willy-nilly in the destruction of this environment. It is we who have allowed these cars to pile up in wrecked-car junkyards. It is we who have polluted our streams with sewage, without having sewage disposal plants. It is we who have allowed industry to dump offal into the streams, such as coming from meat-packing plants. And all this has been done while we sat idly by and did nothing. Then, suddenly, we wake up and discover, to our horror and astonishment, that our environment is not what it should be. It is we who have littered our streets. It is we who have littered our campgrounds. There was a time here in Montana when it was considered almost a crime to go into a campground and fail to clean it up when you left. I regret to state that things have changed since those days. It used to be almost a crime for a person to go through another man's gate and not close that gate behind him when he went through. I now submit that times have changed, and this, too, is done willy-nilly, without regard to that man's cattle. Do we have a right to a healthful environment in view of our past actions? I submit that probably we do not. I submit that what we have instead is an unholy mess that's going to have to be cured by legislative action, and it's going to have to be done feelingly and gropingly to contend with this mess that we have created. And for these reasons, I would resist Mrs. Robinson's proposal. Now, for the edification of the rest of the body, our state Legislature has not been exactly remiss in this matter. In 1971, they passed a law, section 65-601 is where it begins and it's a seven-page law, and I think we'd save a lot of time if the delegates here would take a look at this law and see what's already been done. I'm not going to read at length, Mr. President [Chairman], but I would like to quote a few lines from it. They say that "The purpose of this act is to declare a state policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to environment and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the state; and to establish an Environmental Quality Control Council. The Legislative Assembly, recognizing the profound impact of man's activity on the interrelation of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation and new and expanding technological advances, and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy—" Well, I could read on and on, Mr. President [Chairman], but I'll refrain. At any rate, I would very seriously urge the rest of the delegates to get hold of this and study it. It will aid us greatly and, I think, shorten the time for the consideration of this proposal. And thank you, Mr. President.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, during this debate there has been a lot of discussion of fear which is rampant in this body and elsewhere, according to my reading of frivolous suits in the private area of our state should this program be written into the Constitution. It is in the private sector where people are evidencing fear. I have heard very little concerning the fear that would come from people who injure federal or state lands. That seems to be all right. And it's the little fellow that is being used as a—being frightened by this ghost that is being raised; I think that the little fellow who gets into a nuisance suit is going to get into the nuisance suit anyway. It's already a danger for him. If he has a stock-feeding yard and the odor is bad, his neighbor may bring a nuisance suit against him or may even sue for damages. This has happened. All sorts of things of that character are possible, but we don't hear about the things that might transpire as a result of some large organization eroding the country or wrecking the landscape or polluting the streams or one thing and another. I'm afraid that it's a case of the hand of Esau but the voice of Jacob. I think that we're trying to—somebody is trying to muddy the water and frighten all the little people in Montana, of whom there are many more than there are large corporations, with the consequence that the delegates will be chased back into their holes and refuse to vote.

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: Mr. President [Chairman], I rise in support of Delegate Robinson's amendment here. I know during the course of our deliberations here, the argument has been used many times that if we put such-and-such into the Constitution, the people are going to vote it down; and I would like to use some of the same reasoning, I guess, but maybe in reverse. It's that, if we in this body don't take a strong stand in regard to the environment, that maybe the people will think that we have not done a good job and say, "Well, we're just going to have to send it back to them and have them do a better job next time." So I would encourage you to support Delegate Robinson's amendment. Thank you.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Thank you, Mr. President [Chairman]. I speak in opposition to Mrs. Robinson's amendment because I feel that the article itself, in the first section, will cover this. Much of it is statutory, and the Legislature can enact these same provisions. In thinking of this at this time, I doubt that there's a neighbor that I couldn't sue right now. I think that I have been aware of clean air and clean water perhaps many years before Mae Nan was born. I've been interested in health and welfare, and I still am, but I cannot go along with this because I can see all types of jury suits. Also, in my area there are areas where the water level raises from time to time; the sewers and the wells intermingle. Who's going to sue who? Its real interesting.

CHAIRMAN GRAYBILL: Very well, the issue is on Mrs. Robinson's proposal to amend Section 1 of the environmental part of the Natural Resources proposal.

Mrs. Robinson, are you ready to close?

DELEGATE ROBINSON: Mr. President, I would like to just briefly reiterate some of the comments that have been made since I last spoke. Mr. Garlington brought up the usage of some of these words. It reminds me of the last hearing that the Natural Resources Committee had; and if you'll remember, for those of you who were there, an attorney from Helena, Mr. Picotte, who represented North Dakota Utilities, was also concerned about the words "clean", "healthful", "quality", because they were too metaphysical—if you will remember that terminology. Mr. Garlington's objections seemed to be very similar to me. We are worried about someone being able to interpret these words. When we were on the majority proposal, as I indicated to you awhile ago, no one mentioned the problem we would have in determining "adequate" or "unreasonable" or any of the words used there. Further, I'd like to indicate to you that in the Bill of Rights, in the present and the proposed, we have certain metaphysical terms such as "inalienable rights", which include "the right of pursuing life's basic necessities" or "of enjoying or defending their lives and liberty", "of acquiring, possessing and protecting property", and "of seeking their safety, health, happiness in all lawful ways". These are pretty metaphysical terms, too, it seems to me. But it seems that, judging by contemporary community standards, we've had no trouble in determining what "liberty" means, what "freedom", what "inalienable rights" mean. I submit that we are not going to have any trouble in determining what "clean" and "healthful" and "high-quality" means. Secondly, in terms of Mr. Rebal's comments about would you be able to shoot a duck because you're not protecting the natural resources or the wildlife and vegetation. It seems to me that if you read this carefully and just look at the last sentence, where it says "through appropriate legal proceedings, subject to reasonable limitation and regulation as may be provided for [by] law", there's your answer. We're not going to have these ridiculous things happening; I mean, the Legislature is reasonable. We can at least expect reasonable guidelines from them. Thirdly, Mr. Swanberg's comments—do we really have the right? Have we utilized this right? Perhaps we have been remiss in our right; and that's why I think it's important to include the section, as I have, dealing with duty. We have had this right and perhaps we haven't been very careful to uphold it, and that's why I think we—to insure adequate enforcement of this right, let's put the duty in there, too, to make it meaningful. In terms of Mr. Scanlin's objections, he's right in a way. The Legislature hasn't really been remiss. As a matter of fact, they have done some very good things in terms of the environment. The thing that really bothers me is that we, as a Constitutional Convention—trying to look ahead in a hundred years, we're not even willing to approach the subject with the same aggressiveness that the Legislature has done so in the past. I think that if you were really concerned with living up to any of your campaign commitments, if you want something reasonable, if you want something that's meaningful in terms of the environment of Montana, you should support my proposed amendment.

CHAIRMAN GRAYBILL: Very well, the issue is on Mrs. Robinson's proposal to amend Section 1 by adding the words: "The public policy of the State of Montana is to achieve and maintain a high-quality environment which is clean, healthful and pleasant, for the protection and enjoyment of its people and the protection of its natural beauty and natural resources, including wildlife and vegetation. Each person shall have the right to a high-quality environment which is clean, healthful and pleasant, and the duty to act in accordance with this public policy. Each person may enforce such right against any party, governmental or private, through appropriate legal proceedings, subject to reasonable limitations and regulations as may be provided by law." I presume you want a roll call vote; we'll have one. All in favor of the motion to put this in as Section 1 of the Environmental Article, vote Aye; and opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please cast the ballot.

Aasheim	Nay
Anderson, J.	Nay
Anderson, O.	Nay
Arbanas	Aye
Arness	Absent
Aronow	Nay
Artz	Aye
Ask	Nay
Babcock	Nay
Barnard	Nay
Bates	Nay
Belcher	Nay
Berg	Nay
Berthelson	Nay
Blaylock	Aye
Blend	Nay
Bowman	Aye
Brazier	Nay
Brown	Aye
Bugbee	Aye
Burkhardt	Aye
Cain	Aye

Campbell	Aye
Cate	Aye
Champoux	Aye
Choate	Aye
Conover	Aye
Cross	Aye
Dahood	Nay
Davis	Nay
Delaney	Nay
Driscoll	Nay
Drum	Nay
Eck	Aye
Erdmann	Nay
Eskildsen	Nay
Etchart	Nay
Felt	Absent
Foster	Aye
Furlong	Aye
Garlington	Nay
Gysler	Nay
Habedank	Absent
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Nay
Harlow	Aye
Harper	Aye
Harrington	Aye
Heliker	Aye
Holland	Nay
Jacobsen	Nay
James	Aye
Johnson	Nay
Joyce	Nay
Kamhoot	Nay
Kelleher	Excused
Leuthold	Aye
Loendorf	Aye
Lorello	Nay
Mahoney	Excused
Mansfield	Nay
Martin	Nay
McCarvel	Nay
McDonough	Aye
McKeon	Aye
McNeil	Nay
Melvin	Aye
Monroe	Aye
Murray	Nay
Noble	Nay
Nutting	Nay
Payne	Aye
Pemberton	Nay
Rebal	Nay
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Aye
Romney	Aye
Rygg	Nay
Scanlin	Nay
Schiltz	Aye
Siderius	Aye
Simon	Nay
Skari	Aye
Sparks	Nay
Speer	Aye
Studer	Aye
Sullivan	Nay
Swanberg	Nay
Toole	Excused
Van Buskirk	Aye
Vermillion	Aye
Wagner	Nay
Ward	Nay
Warden	Aye
Wilson	Nay
Woodmansey	Nay
Mr. Chairman	Aye

CLERK SMITH: Mr. President, 43 voting Aye; 51 voting No.

CHAIRMAN GRAYBILL: 51 delegates having voted No, 43 having voted Aye, the proposed amendment is defeated.

The Chair will recognize Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, I wish to offer a substitute motion.

CHAIRMAN GRAYBILL: Yes, Mrs. Reichert; proceed.

DELEGATE REICHERT: This is being printed. I think it is being distributed now.

CHAIRMAN GRAYBILL: Do you want the Chair to read it? Do you want the clerk to read it?

DELEGATE REICHERT: Yes, would you please read it.

CHAIRMAN GRAYBILL: All right, will the clerk please read Mrs. Reichert's substitute motion.

CLERK SMITH: "Section 1, Public policy—legislative responsibility. The public policy of the state and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The general assembly shall provide by law for the implementation and enforcement of this public policy. Section 2, Rights of individuals. Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings, subject to reasonable limitation and regulation as the general assembly may provide by law. Signed: Reichert."

CHAIRMAN GRAYBILL: Very well, Mrs. Reichert's amendment has two sections. I take it to be your intent to substitute it in place of Section 1, sub. 1, 2 and 3, if it passes. Is that right, Mrs. Reichert?

DELEGATE REICHERT: That's right, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, you may speak on your motion.

DELEGATE REICHERT: I'm sure that most of the delegates will recognize this as the Illinois provision, verbatim. I had hoped I would not have to submit this motion. I had hoped that the last one would have passed; but since we want something that's tried and true, something that's been included in a constitution before, I had this ready. Now, I want to remind the delegates again that, last fall, when a questionnaire was sent to us, many of us felt that the Illinois provision would be fine for the State of Montana. I am very much afraid of the majority proposal for several reasons. I consulted with a lawyer, and he said Section 2 and Section 3 of the majority proposal would do more harm than good. I'd like to read you his comments about Section 2 of the majority proposal. I'll read the section first, the subsection of Section 1. "The Legislature must provide for the administration and enforcement of this duty"—and that's the duty to maintain the clean environment. Now, "the direction to the Legislature to act in this section adds nothing positive in terms of environmental protection and may be extremely detrimental. The Legislature has the inherent power to act regarding environmental matters. In addition, there is no way to enforce such a direction, for no one, including the courts, can require the Legislature to act in a certain way with regard to environmental or any other matters. In other words, if this section of the majority proposal were included in our Constitution, it would be harmful to future generations of this state." Section 3—that, too, is considered to be harmful. "This section would add further credence to the position that matters relating to the environment are exclusively within the control of the Legislature. With such an interpretation, if the Legislature did not act, there would be no remedy. As has already been noted, the Legislature cannot be forced to provide any particular type of remedy or remedies. The majority appears to believe that standing to sue should not exist without actual provable money damages. If we wait until then, of course, it is too late, for the degradation to the environment will have already occurred." I hope that the delegates will realize that the Illinois provision is our last hope to have something meaningful in our Constitution, and I'll rest at this point.

CHAIRMAN GRAYBILL: Is there further discussion of Mrs. Reichert's proposal? Mr. Vermillion.

DELEGATE VERMILLION: Mr. Chairman, there seems to be some people who may think that we're suggesting—there is a suggestion here of something pretty radical, and we just got through talking about one proposal that was somewhat similar to what North Dakota had introduced. I point out this little news article that we've had on our desks. The North Dakota Constitution has been released for the citizens to take a view of it, and they have something similar to this new proposal about environmental protection; and according to this one news article, they say in North Dakota, initial observations of North Dakotans about their new proposed Constitution is that it's pretty much a middle-of-the-road document that doesn't wander very far to the left or right. For people who want a constitution that takes off on a lot of unexplored trails, this one isn't it. So I think what we're doing here is not suggesting anything radically new or far out, but something I really think the people expect us to do. It's something that is middle of the road, if you will, and I think this assembly should adopt it.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, will Mrs. Reichert yield to one question, please?

CHAIRMAN GRAYBILL: Mrs. Reichert?

DELEGATE REICHERT: I'm glad there's just one. Yes, Mr. Murray.

DELEGATE MURRAY: Is our Legislature to be called the "general assembly" now?

DELEGATE REICHERT: I beg your pardon? Oh—

DELEGATE MURRAY: Well, you used the same language, and that means you used "general assembly".

DELEGATE REICHERT: Oh, I guess I should substitute. Thank you.

DELEGATE MURRAY: You believe that's a stylistic change?

DELEGATE REICHERT: Yes, very stylistic.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: May I ask Mrs. Reichert a question, please?

CHAIRMAN GRAYBILL: Will you yield?

DELEGATE REICHERT: Yes, Mr. Gysler.

DELEGATE GYSLER: Mrs. Reichert, you mentioned that you consulted an attorney. Would you mind telling us who the attorney was?

DELEGATE REICHERT: McCrory of the law school.

DELEGATE GYSLER: Thank you. Really, from my own personal viewpoint, I think, again, that we're getting into another article simply because there is a right to sue provision; and I would like to say what I did a little while ago, that I believe this should come up when the minority proposal comes up. As far as the rest of it, I again ask you, take and read it. Don't look at the beautiful words, but look at the meaning, because it's the meaning what is interpreted and not the beautiful words. You can write things and have them sound wonderful; but if they're going to have any meaning, you have to have meaning in them; and I believe the majority proposal has done this, so I resist this amendment.

CHAIRMAN GRAYBILL: Is there any further discussion of Mrs. Reichert's proposal? Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman. Just briefly, I must remind the delegates that the majority took the word "healthful" out to strengthen the majority proposal. We did not want the Supreme Court of this state or the Legislature to be able to say that the environment in Montana, as we know right now, can be degraded to a healthful environment. So our purpose in leaving that word out was to strengthen it. I would like also to remind the delegates that the Illinois provision does not contain subparagraph 3 of the majority proposal, which speaks precisely to the point that concerned Jerry Cate so much, and that is there is no provision by which the Legislature can prevent—and this is anticipatory—can prevent' unreasonable depletion of the natural resources. I submit if you will read that majority proposal again and again, you will find that it is the strongest of any constitution and the issue to which George Harper is still concerned is not foreclosed. That issue will be put before this Convention in the form of an amendment from our Chairwoman, Louise Cross. It will speak specifically to the issue of the citizen's right to sue anybody as a separate issue and to be added as subparagraph 4 of this proposal if it passes. Thank you.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, fellow delegates. I did not get a copy of this amendment, for some reason, and so was at a little bit of a disadvantage. However, I want to address my remarks to just two words, "healthful environment". And it's my understanding that the amendment we have before us simply modifies "environment" by the word "healthful", and it also includes the provision of standing to sue, if you will. I oppose this amendment on that very basis because I feel that if we, as a Constitutional Convention of Montana, use our line of defense on the environment on the basis of healthful, then we, in fact, might as well forget it, because what I'm concerned about in Montana is not a healthful environment. This country is going to have to address itself to the question of a healthful environment. What I'm concerned about is an environment that is better than healthful. If all we have is a survivable environment, then we've lost the battle. We have nothing left of importance. The federal government will see to it one way or another, if it's in its power, that we have an environment in which we can manage to crawl around or to survive or to in some way stay "alive". But the environment that I'm concerned about is that stage of quality of the environment which is above healthful; and if we put in the Constitution that the only line of defense is a healthful environment and that I have to show, in fact, that my health is being damaged in order to find some relief, then we've lost the battle; so I oppose this amendment. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: May I ask Mr. Foster a question?

CHAIRMAN GRAYBILL: Mr. Foster, will you yield?

DELEGATE FOSTER: Certainly, Mr. Chairman.

DELEGATE REICHERT: Would you like the word "clean" inserted?

DELEGATE FOSTER: Well, I supported the original amendment this morning, which had a clean and healthful environment and certainly would approve of including clean.

DELEGATE REICHERT: I'd be glad to include the word "clean". We'd be a little different from Illinois' Constitution. We'd have an additional word, but I would—I don't know how to do that parliamentarily, to include the word "clean" in the second section—"each person has the right to a clean and healthful environment". If I can get Mr. Foster's vote with that addition, I'd be glad to. And I think it is a point well taken. This business with words really confuses me, and I know that we were talking about the word "adequate" before. I know what happened to public hearings because of the word "adequate", and yet the majority uses the word "adequate", and nobody yet has explained what "adequate remedies" are. I think that there is difficulty with words, but I think we're going to have to face this problem. And I think, as I said, the least we can do is have the Illinois provision in our Constitution with the addition of the word "clean".

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, I must point out one additional omission, and this was the principal reason I opposed Delegate Robinson's—it deleted from the majority proposal the affirmative duty to improve our environment. And if we ever get back to the majority proposal, subsection 1, I will move to change that word "enhance" to "improve" so there will remove any doubt as to what that word is intended to mean.

CHAIRMAN GRAYBILL: Mrs. Reichert, are you ready to close?

DELEGATE REICHERT: I am, I believe, and I think that perhaps Mr. McNeil is right. I would like Section 1 in addition to the Illinois provision, so perhaps we can move for acceptance of the Illinois provision and then we can get Section 1 of the majority proposal, and I think then we'll have a fine section on environmental protection for the state. I talked to Mr. McNeil during the lunch hour, and I said, "Mr. McNeil, you are one of those who, in answering the questionnaire sent last fall, said he could approve of the Illinois provision." And I'll remind all of you others—who said they could approve the Illinois provision—I have the list right here—but Mr. McNeil was one of them, and at lunchtime he thought he could; so if we could do this and have his first section of the majority proposal, we'd have a better provision than Illinois.

CHAIRMAN GRAYBILL: Very well—do you want to close, too, Mr. McNeil? Okay.

DELEGATE McNEIL: Mr. Chairman, I'd like the privilege of responding to that. I did not say I would support the Illinois provision in response to that inquiry. I said I would advocate a stronger provision. The delegate proposal which I submitted to this committee substituted the word "quality" for the word "healthful". My thinking, hopefully, was that we want something stronger than healthful. I support our majority position here, now, that to maintain and improve the environment of this state is much stronger than Illinois.

DELEGATE REICHERT: Mr. Chairman, may I close again?

CHAIRMAN GRAYBILL: If you think you need to.

DELEGATE REICHERT: I want to thank Mr. McNeil, because I think he's perfectly right. We'll have the Illinois provision and the majority proposal Section 1, and we'll have a strong section on the environment.

CHAIRMAN GRAYBILL: Very well, so many as shall be in favor of—do you want a roll call vote?

UNIDENTIFIED DELEGATES: Yes.

CHAIRMAN GRAYBILL: All right. So many as shall be in favor of Mrs. Reichert's proposal on environment, which is the Illinois provision, please vote Aye on the voting machine; so many as are opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, we'll close the ballot. Please take the vote.

DELEGATE CATE: Cate votes Aye.

CHAIRMAN GRAYBILL: Very well, we'll check it. Will the clerk please add Mr. Cate's Aye vote.

Aasheim	Nay
Anderson, J.	Nay
Anderson, O.	Absent
Arbanas	Aye
Arness	Absent
Aronow	Nay
Artz	Aye
Ask	Nay
Babcock	Nay
Barnard	Aye
Bates	Absent
Belcher	Absent
Berg	Nay
Berthelson	Nay
Blaylock	Aye
Blend	Nay
Bowman	Aye
Brazier	Nay
Brown	Nay
Bugbee	Aye
Burkhardt	Aye
Cain	Aye
Campbell	Aye
Cate	Aye
Champoux	Aye
Choate	Aye
Conover	Aye
Cross	Aye
Dahood	Nay
Davis	Nay
Delaney	Nay
Driscoll	Nay
Drum	Nay
Eck	Aye
Erdmann	Nay
Eskildsen	Nay
Etchart	Nay
Felt	Absent
Foster	Aye
Furlong	Aye
Garlington	Absent
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Nay
Hanson, R.	Aye
Harbaugh	Nay
Harlow	Aye
Harper	Aye
Harrington	Aye
Heliker	Aye
Holland	Nay
Jacobsen	Aye
James	Aye
Johnson	Nay
Joyce	Aye
Kamhoot	Nay
Kelleher	Excused
Leuthold	Aye
Loendorf	Absent
Lorello	Nay
Mahoney	Excused
Mansfield	Nay
Martin	Nay
McCarvel	Nay
McDonough	Aye
McKeon	Aye
McNeil	Nay
Melvin	Nay
Monroe	Aye
Murray	Nay
Noble	Nay
Nutting	Nay
Payne	Aye
Pemberton	Nay
Rebal	Nay
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Aye
Romney	Aye
Rygg	Nay
Scanlin	Nay
Schiltz	Aye
Siderius	Aye
Simon	Nay
Skari	Aye
Sparks	Nay
Speer	Aye

Studer	Nay
Sullivan	Nay
Swanberg	Nay
Toole	Excused
Van Buskirk	Aye
Vermillion	Aye
Wagner	Nay
Ward	Nay
Warden	Nay
Wilson	Nay
Woodmansey	Aye
Mr. Chairman	Aye

CLERK SMITH: With Mr. Cate voting Aye, 43 voting Aye, Mr. President; 47 voting No.

CHAIRMAN GRAYBILL: 47 having voted No, 43 having voted Aye, the motion is defeated.

Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman, if I may, at this time, I would move to amend Section 1, subsection 1, as has been placed on the desks of all the delegates.

CHAIRMAN GRAYBILL: Very well, will the clerk please read Mr. Campbell's amendment.

CLERK SMITH: "Mr. Chairman. I move to amend Section 1, subsection 1, page 3, by deleting and amending as follows: "The State of Montana and each person must maintain and enhance a clean and healthful environment in the state for the enjoyment and protection of present and future generations. Signed: Campbell."

CHAIRMAN GRAYBILL: Mr. Campbell, I take it that adds the words "clean and healthful" and it adds the words "the enjoyment and protection of" the present environment, is that correct?

DELEGATE CAMPBELL: It does.

CHAIRMAN GRAYBILL: Very well.

Mr. Campbell.

DELEGATE CAMPBELL: Thank you, Mr. Chairman. I think we're back at the original premise again. If I may have your attention, please. We are back to the original position again. Do we—as the citizens of the State of Montana have overwhelmingly said in every poll and indication, they want some provision on the environment. Are we now going to say that we do want a clean and healthful environment, or are we going to duck the responsibility that we've been talking about all day today? Now, I do not buy the theory that not describing the type of environment that we want for the State of Montana makes it a stronger environmental provision. I think since the environment is the number one issue, it's incumbent upon this Convention to live up to their responsibilities. A clean and healthful environment, as you will notice, as Mr. Swanberg said, is something less than the Legislature has already stated in their description of what they want for the State of Montana. I do not feel we can accept anything less than a clean and a healthful environment. If you'll check the codes, you'll see that the last Legislature, which we all commend for doing such a good job—and who had the courage to put into this state the strongest environmental provision yet that this state has ever adopted, and they had the courage to go home to their electorate and they got from that electorate the satisfaction and, really, the commendation of the people of the State of Montana. Now, they describe as a safe, healthful, productive, aesthetically and culturally pleasing surroundings. Now, has anyone suggested such a far-reaching proposal like that for the Constitution? No. Now, certainly, we have to at least live up to the present statutes of the State of Montana, and I do not think that you can go home and walk down the streets of your hometown between the time that this Convention adjourns and the time this is voted on—May I have your attention? Your honor—Mr. Chairman, I don't feel half the delegates are listening, and I would call for their attention.

CHAIRMAN GRAYBILL: I'm watching, and I'm rapping them down when there's not attention. You have their attention. Go ahead, Mr. Campbell.

DELEGATE CAMPBELL: If I may proceed. I sincerely do not feel that you can go to your hometown and walk down the street and someone will come up to you and say, "What did you do about the environment, finally, in the Constitutional Convention?" Under the majority proposal, you will have to look them in the eye, knowing that you spent all the money to come over here to do something they were interested in, and say, "Yes, we the people in Montana at the Convention decided to have one." Now, what is he going to say? You decided to have an environment. Well, isn't that wonderful! We've already got an environment. What did you decide that you wanted the environment to be? Well, some radical proposals were made about public trusts—were thrown out; other things—pleasant environment. And someone suggested "clean and healthful". Now, we're all for that, but we certainly don't want to use the words. Now, what is this average citizen going to say? He's going to say, "You went all the way over there for something that you agreed in and said you were too timid to put it in the Constitution like we all wanted to have it?" This certainly is the emperor's clothing again. If you can all convince yourself that not describing the type of environment you want is so strong and so important and going to give you this extra protection, then I submit to you that when you get home, some voter is going to ask you what it is and they're going to see right through it, that there's no description on the type of environment that you put on here at all. And there won't be any more North Dakota jokes, because the joke will be on Montana. So, I submit this is a basic minimum. If we're going to do anything, this is the place to do it. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, is there discussion on this?
Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman—oh, you turned the volume up. I rise to offer a substitute motion for Mr. Campbell's amendment. It will read basically as the majority proposal does, page 3, line 9—change the word "enhance" to "improve"; line 10, delete the words "of the state"; insert, before the word "environment", "Montana"—so that the substitute motion will have subsection 1 of Section 1 read as follows: "The State of Montana and each person must maintain and improve the Montana environment for present and future generations."

CHAIRMAN GRAYBILL: Very well, Mr. McNeil's substitute motion would have Section 1, sub. 1, read: "The State of Montana and each person must maintain and improve the Montana environment for the present and future generations."
Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, this is basically the majority proposal rephrased and deletes the words "clean" and "healthful". Our intent is not to permit the Legislature or the courts to permit our present environment to be degraded to what they might interpret "a clean environment" or "a healthful environment" to mean.

CHAIRMAN GRAYBILL: Very well, is there further discussion on Mr. McNeil's motion?
Mr. Campbell.

DELEGATE CAMPBELL: I oppose Delegate McNeil's proposal. What this does is, in effect, lock into the Constitution the present level of pollution in those areas which it is already too much; and Missoula is not going to be satisfied to say that your air will remain as polluted as it is now, forever in the future. We sincerely want to improve the quality of our air. I do not believe—and I believe you stated it sincerely when you said this was the intent of your majority report, to insure that the present level of pollution, or lack thereof, will be maintained by the State of Montana. I feel that this should be defeated, that you should improve and try for a clean and healthful environment and that this is worse than nothing. It would absolutely take away the incentive that the Legislature has had. Who knows, it may even put their acts unconstitutional. I would strongly oppose this amendment.

CHAIRMAN GRAYBILL: The Chair would only point out to you, Mr. Campbell, that it does use the word "improve". I don't know what that may mean. Is there other discussion?
Mr. Rebal.

DELEGATE REBAL: Mr. Chairman, as a member of the Natural Resources Committee, I support Mr. McNeil on this motion.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, as a member of the Natural Resources Committee that worked for about five weeks on this and heard every argument that could possibly be presented, I think—I've heard all of them that's been made here today—we're being worn down. I've been keeping track of it here, it looks like the proposals—there are several of them yet—they're probably for the purpose of just getting a few votes away each time, because people are getting tired of it; but I'm going to stay right here. I'm going to vote for Mr. McNeil's proposal. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President and fellow delegates. I, too, am with Mr. Scanlin and these others that have talked about the majority report. We know they spent weeks in working this out. They have used the wording, and I believe our committees should have a little bit more consideration than we have been giving them. Thank you.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman, the committee may feel, after hearing the long list of witnesses they heard, that they have come up with the strongest statement that they can come up with on environment for Montana, but I've been hearing from environmental groups around the state, from students who have looked at this, and I have not yet found one who thought that this was a satisfactory article. In fact, they've ridiculed it, and I think they will ridicule us if we go home with an article like this for the environment.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: I feel that Mr. McNeil's motion should take away any doubts about the committee's desire that we improve and that the environment, and especially in places like Missoula—I don't know, to me there is absolutely nothing magic with words "clean and healthful" that can be interpreted by courts to mean different things. What the committee really wants to do, and what we felt we have done in our wording, is to make sure that there is no judicial interpretation that can come along that can say that the environment, as we have it at the present time or when our Constitution is accepted or rejected, but hopefully accepted, that can say that our environment can go downhill from time to time. The only way that it can go is uphill, is get better, and this is why we have stayed away from all the adjectives. I endorse Mr. McNeil's amendment.

CHAIRMAN GRAYBILL: Very well. The question is on Mr. McNeil's amendment to add the word "improve" in place of the word "enhance", in line 9 of Section 1 on page 3, and to add the word "Montana" before the word "environment", so that it says "the Montana environment", and strike the words "of the state". So many as shall be in favor of Mr. McNeil's proposal, please—do you want a roll call?

DELEGATE KAMHOOT: Roll call.

CHAIRMAN GRAYBILL: Very well. So many as shall be in favor of Mr. McNeil's proposal, please vote Aye on the voting machine; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: If not, the vote is closed. Please take it.

Aasheim	Absent
Anderson, J.	Aye
Anderson, O.	Aye
Arbanas	Aye
Arness	Absent
Aronow	Aye
Artz	Aye
Ask	Aye
Babcock	Aye
Barnard	Aye
Bates	Aye
Belcher	Aye
Berg	Nay
Berthelson	Aye
Blaylock	Aye
Blend	Aye
Bowman	Aye
Brazier	Aye
Brown	Nay
Bugbee	Nay
Burkhardt	Nay
Cain	Absent
Campbell	Nay
Cate	Nay
Champoux	Aye
Choate	Absent
Conover	Aye
Cross	Aye
Dahood	Absent
Davis	Aye
Delaney	Aye
Driscoll	Aye
Drum	Aye
Eck	Nay
Erdmann	Aye
Eskildsen	Aye
Etchart	Aye
Felt	Absent
Foster	Nay
Furlong	Nay

Garlington	Absent
Gysler	Aye
Habedank	Aye
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Aye
Harlow	Nay
Harper	Nay
Harrington	Aye
Heliker	Nay
Holland	Absent
Jacobsen	Aye
James	Aye
Johnson	Aye
Joyce	Aye
Kamhoot	Aye
Kelleher	Excused
Leuthold	Aye
Loendorf	Aye
Lorello	Aye
Mahoney	Excused
Mansfield	Aye
Martin	Aye
McCarvel	Aye
McDonough	Aye
McKeon	Aye
McNeil	Aye
Melvin	Aye
Monroe	Nay
Murray	Aye
Noble	Aye
Nutting	Aye
Payne	Aye
Pemberton	Aye
Rebal	Aye
Reichert	Nay
Robinson	Nay
Roeder	Aye
Rollins	Absent
Romney	Nay
Rygg	Aye
Scanlin	Aye
Schiltz	Aye
Siderius	Nay
Simon	Aye
Skari	Nay
Sparks	Aye
Speer	Nay
Studer	Aye
Sullivan	Aye
Swanberg	Absent
Toole	Excused
Van Buskirk	Aye
Vermillion	Aye
Wagner	Aye
Ward	Aye
Warden	Aye
Wilson	Aye
Woodmansey	Aye
Mr. Chairman	Aye

CLERK HANSON: Mr. Chairman, 68 delegates voting Aye, 19 voting No.

CHAIRMAN GRAYBILL: 68 delegates having voted Aye, 19 having voted No, Mr. McNeil's substitute motion amending the Section 1, subsection 1, to read: "The State of Montana and each person must maintain and improve the Montana environment for present and future generations" has passed.

The Chair will recognize Mr. Campbell.

DELEGATE CAMPBELL: I move to amend the motion by inserting the words, after "improve", "a clean and healthful environment for Montana for present and future generations".

CHAIRMAN GRAYBILL: You want to put in the words, after "improve", "a clean and healthful Montana environment"?

DELEGATE CAMPBELL: Yes.

CHAIRMAN GRAYBILL: That's the way it is; and leave out "in the state". "For the enjoyment and protection of"—are you putting that in again?

DELEGATE CAMPBELL: No.

CHAIRMAN GRAYBILL: You're leaving that out this time. Okay. Very well, Mr. Campbell's motion has the effect of adding the words "a clean and healthful Montana environment" to the status of the motion—or, status of the section as it now stands, so that the thing would read: "The State of Montana and each person must maintain and improve a clean and healthful Montana environment." Is there further discussion on Mr. Campbell's amendment? (No response) Do you want a roll call vote? Very well. All those in favor, please vote Aye on the voting machines; all opposed, please vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the vote.

Aasheim	Absent
Anderson, J.	Nay
Anderson, O.	Nay
Arbanas	Aye
Arness	Aye
Aronow	Nay
Artz	Aye
Ask	Aye
Babcock	Nay
Barnard	Aye
Bates	Aye
Belcher	Nay
Berg	Aye
Berthelson	Nay
Blaylock	Aye
Blend	Absent
Bowman	Aye
Brazier	Nay
Brown	Absent
Bugbee	Aye
Burkhardt	Aye
Cain	Aye
Campbell	Aye
Cate	Aye
Champoux	Aye
Choate	Absent
Conover	Aye
Cross	Aye
Dahood	Absent
Davis	Nay
Delaney	Nay
Driscoll	Aye
Drum	Nay
Eck	Aye
Erdmann	Nay
Eskildsen	Absent
Etchart	Nay
Felt	Absent
Foster	Aye
Furlong	Aye
Garlington	Absent
Gysler	Nay
Habedank	Aye
Hanson, R.S.	Nay
Hanson, R.	Aye
Harbaugh	Aye
Harlow	Aye
Harper	Aye
Harrington	Aye
Heliker	Aye
Holland	Nay
Jacobsen	Aye
James	Aye
Johnson	Nay
Joyce	Nay
Kamhoot	Nay
Kelleher	Excused
Leuthold	Nay
Loendorf	Aye
Lorello	Nay
Mahoney	Excused
Mansfield	Nay
Martin	Nay
McCarvel	Nay
McDonough	Aye
McKeon	Aye
McNeil	Nay
Melvin	Aye
Monroe	Aye
Murray	Nay
Noble	Nay
Nutting	Nay
Payne	Aye
Pemberton	Nay
Rebal	Nay
Reichert	Aye
Robinson	Aye
Roeder	Absent
Rollins	Aye
Romney	Aye
Rygg	Nay
Scanlin	Nay
Schiltz	Aye
Siderius	Aye
Simon	Nay
Skari	Aye
Sparks	Nay
Speer	Aye
Studer	Nay
Sullivan	Nay
Swanberg	Absent
Toole	Excused
Van Buskirk	Aye
Vermillion	Aye
Wagner	Aye
Ward	Nay
Warden	Aye
Wilson	Nay
Woodmansey	Nay
Mr. Chairman	Aye

CLERK HANSON: Mr. Chairman, 49 delegates voting Aye, 38 voting No.

CHAIRMAN GRAYBILL: 49 delegates having voted Aye and 38 delegates having voted

No, Mr. Campbell's motion passes. Therefore the section now reads: "The State of Montana and each person must maintain and improve a clean and healthful Montana environment for the present and future generations." Are there further amendments? (No response) If not, Mrs. Cross, do you want to move that Section 1 as amended—Mr. Murray, do you want to make the motion?

DELEGATE MURRAY: I move that when this committee does arise and report, after having had under consideration Section 1, subsection 1, of Committee Proposal Number 6, it recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: Very well, all in favor of the motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: We have Section 1 adopted. Will the clerk please read subsection 2.

CLERK HANSON: "Section 1, subsection 2. The Legislature must provide for the administration and enforcement of this duty." Mr. Chairman, subsection 2.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Section 1, subsection 2, of Proposal Number 6, that it recommend the same be adopted.

CHAIRMAN GRAYBILL: Very well. The issue, then, is on subsection 2 of Section 1 of the Natural Resources proposal.

The Chair recognizes Mrs. Cross.

DELEGATE CROSS: Mr. Chairman, at this time I would like to make a substitute motion. On your desks you have a section with my name on it. I would like to strike the language in subsection 2 and also in subsection 3 and replace both with this amendment. And will you change the words in the first line to read as follows: "To meet the obligation set forth in Section 1, each Montana resident may take appropriate legal proceedings against any party, governmental or private, subject to reasonable limitation and regulation as the Legislative Assembly may provide by law."

CHAIRMAN GRAYBILL: Very well. The Chair understands it to be Mrs. Cross' amendment—substitute motion that we would delete subsections 2 and 3, on lines 12 through 18, and in place put the language: "To meet these obligations set forth in Section 1, each Montana resident may take appropriate legal proceedings against any party, governmental or private, subject to reasonable limitation and regulation as the Legislative Assembly may provide by law."

Mrs. Cross.

DELEGATE CROSS: I would like to explain this action. We discussed the pros and cons for the better part of the day. I think that leaving the two sections in, as in the majority report, greatly weakened the stand of the original statement in Section 1. Section 2 does not add anything positive in terms of environmental protection. In fact, it may be detrimental. The Legislature does have inherent power to act regarding environmental matters. In addition, there is no way to force such a direction, and no one,including the courts, can require the Legislature to act in any particular way with regard to the environment or anything else. The danger in Section 2 is that it can be construed to exclusively delegate such authority to the Legislature, and this would even exclude the courts. Section 3 also gives further credence to the position that matters relating to the environment are exclusively within the control of the Legislature. If there is such an interpretation and if the Legislature did not act, there would be no remedy. As I've mentioned before, the Legislature cannot be forced to do any particular type of thing in regard to environmental remedies. Therefore I submit this motion, and I hope that you will support it.

CHAIRMAN GRAYBILL: Very well, the sum and substance of Mrs. Cross' subsection 2 is to give a right to sue. Is there debate on this issue? Incidentally, I might say that the Chair has taken the liberty, Mrs. Cross, of amending the first line to say: "To meet these obligations set forth in subsection 1"—which is what I think you mean.

Very well, Mr. Gysler.

DELEGATE GYSLER: Would Mrs. Cross yield to about two questions, please?

CHAIRMAN GRAYBILL: Mrs. Cross, will you yield?

DELEGATE CROSS: Yes, I will.

DELEGATE GYSLER: Mrs. Cross, is it your intent that there be nothing said in this article to set up any—to direct the Legislature—and when this article says "must", that's as strong as you can get with the Legislature—to set up the administration and enforcement to be sure that these things are done as far as we can go? Is it your intent to delete this?

DELEGATE CROSS: I think, Mr. Gysler, that the Legislature can do this anyway, whether we direct them or not, so I don't see that that Section 2 has much place in the article.

DELEGATE GYSLER: Thank you, Mrs. Cross. I won't ask the other question. I would just like to say that, very seriously, I feel that this should come as an Article IV to be placed in here if it is, because I feel very strongly that this article should say to the Legislature that you must provide administration and the enforcement. We can say, "Well, yeah, they're going to do it anyway", but I think we should tell them that they must.

CHAIRMAN GRAYBILL: Mr. Gysler, the Chair sees your point, and if, when we finish this, it's been amended out, the Chair will give you an opportunity to make it as an amendment to put it back in. Is there further discussion of Mrs. Cross' motion?

Mrs. Robinson.

DELEGATE ROBINSON: Yes, will Mr. Gysler yield to a question?

CHAIRMAN GRAYBILL: Mr. Gysler?

DELEGATE GYSLER: Certainly.

DELEGATE ROBINSON: In subsection 2, where you feel it important to say the Legislature must provide for the administration and enforcement of this duty; what if they don't?

DELEGATE GYSLER: Bring on—if you don't have that much faith in the Legislature, bring on an article later on that allows you to sue the Legislature or do anything you want, but have something in there to say that they must provide these kind of things. If you don't have it and you want to sue, I think you're in worse position to enforce it.

DELEGATE ROBINSON: Mr. Chairman, will Mr. Gysler yield to just one more question?

CHAIRMAN GRAYBILL: Once more?

DELEGATE GYSLER: Certainly.

DELEGATE ROBINSON: Yes. Does—is it not within the inherent prerogative of the Legislature anyway to effectively implement subsection 1?

DELEGATE GYSLER: It's within their prerogative, Mrs. Robinson. The thing that we want to be sure of as a committee is that they are directed to. It only takes about one and half lines, and in doing this we direct them to do it and gives anybody that wants to take any action more force for the action.

CHAIRMAN GRAYBILL: Very well, the issue is on Mrs. Cross' motion to add a right to—a legal right to sue.

Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, I'd like to answer Delegate Robinson's question. What do you do if the Legislature fails to perform what the Constitution directs them to do?—you vote the scoundrels out of office and elect a new bunch.

CHAIRMAN GRAYBILL: Very well.

Mr. Heliker.

DELEGATE HELIKER: Did I understand the Chair to say that we'd have a chance to put that back in?

CHAIRMAN GRAYBILL: Certainly, you will have a chance to.

DELEGATE HELIKER: So, we're simply voting on—

CHAIRMAN GRAYBILL: You're voting on Mrs. Cross' amendment—

DELEGATE HELIKER: It's not necessarily—

CHAIRMAN GRAYBILL: She does take it out, but I think we could then move to put it in as the next section or another section.

DELEGATE HELIKER: Yeah, okay.

CHAIRMAN GRAYBILL: We aren't through with Section 1 yet. Very well, the issue is on Mrs. Cross' motion to add as subsection 2, in place of present subsection 2 and 3, a subsection that reads: "To meet these obligations set forth in subsection 1, each Montana resident may take appropriate legal proceedings against any person, governmental or private, subject to reasonable limitation and regulation by the Legislative Assembly as may be provided by law." Do you want a vote on the machine? (No response) Recorded vote. Very well. So many as are in favor, please vote Aye on the machine; and so many as are opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, we'll close the vote.

Aasheim	Nay
Anderson, J.	Nay
Anderson, O.	Nay
Arbanas	Aye
Arness	Absent
Aronow	Nay
Artz	Aye
Ask	Nay
Babcock	Absent
Barnard	Absent
Bates	Nay
Belcher	Nay
Berg	Nay
Berthelson	Nay
Blaylock	Aye
Blend	Nay
Bowman	Absent
Brazier	Nay
Brown	Aye
Bugbee	Aye
Burkhardt	Aye
Cain	Aye
Campbell	Aye
Cate	Aye
Champoux	Aye
Choate	Aye
Conover	Aye
Cross	Aye
Dahood	Nay
Davis	Nay
Delaney	Nay
Driscoll	Aye
Drum	Nay
Eck	Aye
Erdmann	Nay
Eskildsen	Nay
Etchart	Nay
Felt	Absent
Foster	Aye
Furlong	Aye
Garlington	Nay
Gysler	Nay
Habedank	Aye
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Nay
Harlow	Aye
Harper	Aye
Harrington	Aye
Heliker	Aye
Holland	Nay
Jacobsen	Absent
James	Nay
Johnson	Nay
Joyce	Nay
Kamhoot	Nay
Kelleher	Excused
Leuthold	Nay
Loendorf	Aye
Lorello	Nay
Mahoney	Excused
Mansfield	Nay
Martin	Nay
McCarvel	Aye
McDonough	Aye
McKeon	Aye
McNeil	Aye
Melvin	Aye
Monroe	Aye
Murray	Nay
Noble	Nay
Nutting	Nay
Payne	Aye
Pemberton	Nay
Rebal	Nay
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Aye
Romney	Aye
Rygg	Nay
Scanlin	Nay
Schiltz	Aye
Siderius	Aye
Simon	Nay
Skari	Aye
Sparks	Nay
Speer	Aye
Studer	Nay
Sullivan	Nay

Swanberg	Absent
Toole	Excused
Van Buskirk	Aye
Vermillion	Aye
Wagner	Nay
Ward	Aye
Warden	Aye
Wilson	Nay
Woodmansey	Nay
Mr. Chairman	Aye

CLERK HANSON: Mr. Chairman, 44 delegates voting Aye, 46 voting No.

CHAIRMAN GRAYBILL: 46 delegates having voted No and only 44 having voted Aye, the motion is defeated. We're back on subsection 2 of Section 1. Is there any further discussion of subsection 2? (No response) Very well, so many as shall be in favor—let's see—upon the motion of Mr. Murray having been made that when this committee does rise and report, after having had under consideration subsection 2 of Section 1 of Article VI, the Natural Resources Article, that the same be recommended for adoption—please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: 2 is adopted. Will the clerk please read subsection 3.

CLERK HANSON: "Subsection 3. The Legislature is directed to provide adequate remedies for the protection of the environmental life-support system from degradation and to provide adequate remedies to prevent unreasonable depletion of natural resources." Mr. Chairman, subsection 3.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Excuse me, Mr. Chairman, I defer to Mr. McNeil for making the motion. There's a typographical error—

DELEGATE McNEIL: Mr. Chairman, there's a typographical omission on line 17: following the word "depletion" should appear "and degradation".

CHAIRMAN GRAYBILL: What does that word mean, Mr. McNeil? Strike that, Mr. McNeil.

DELEGATE McNEIL: Without answering the Chair's question, those two words were in the proposal as passed by the committee—

CHAIRMAN GRAYBILL: Right, okay.

DELEGATE McNEIL: —and should be included before the motion—

CHAIRMAN GRAYBILL: I shouldn't have commented; I was overcome, Mr. McNeil. (Laughter)
Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 1, subsection 3, of Proposal Number 6, that it recommend the same be adopted.

CHAIRMAN GRAYBILL: Very well, the motion is on Mr. Murray's motion that we discuss subsection 3.
Mr. Cate.

DELEGATE CATE: Mr. Chairman, I support this language, this provision. I think it means something, with a little cleaning up, and I would move to amend it as follows: by striking the words "is directed to provide" and placing therein the word "shall", so that it reads "the Legislature shall provide adequate remedies"; and striking "for the protection" and putting in the words "to protect the environmental life-support system from degradation and to provide adequate remedies to prevent unreasonable depletion and degradation of natural resources"—whatever that means. But this would make it mandatory rather than permissive and would be a directive to the Legislature to provide adequate remedies to protect the environmental life-support system. The language, again, as amended, would read: "The Legislature shall provide adequate remedies to protect the environmental support system", et cetera, and I would move to amend Section 3 in that regard.

CHAIRMAN GRAYBILL: Mr. Cate, the Chair fails to see how you've added or detracted one whit from the section. I don't see that you've made it any different. Now, Style and Drafting might have wanted to do that to shorten it up or something, but how does saying "shall" make it any more mandatory than "is directed to"? I'm not against letting you amend something, but I'd like you to be making some clear distinction that we can vote on. I don't see that you've added anything.

DELEGATE CATE: Maybe I haven't. Maybe it's an old lawyer's hangup about the word "shall". Maybe it's a Style and Drafting amendment.

CHAIRMAN GRAYBILL: The Chair would rule you out of order until you've thought about it a minute—

DELEGATE CATE: All right.

CHAIRMAN GRAYBILL: —and if you really think it has to be in there, try again; but it looks to me like you haven't added anything that Style and Drafting couldn't take care of. You might make your suggestions to them.
Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, just in case there is some distinction between "directed to" and "shall", I would like to be assured that we can use the word "shall".

CHAIRMAN GRAYBILL: Anybody object to the word "shall" as against Style and Drafting? I think you've got plenty of backing, Mr. Schiltz. Is there other discussion of subsection 3? (No response) Very well, members of the committee, you have before you, on the motion of Mr. Murray that when this committee does arise and report, after having under consideration subsection 3 of Section 1 of the Natural Resources Proposal on environment, the same shall be recommended for adoption. All in favor, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: The Ayes have it, and subsection 3 is adopted.
Mrs. Cross.

DELEGATE CROSS: Mr. Chairman, I don't know if I'm out of order, but I'm going to try anyway. I would like to add a fourth section to Section 1, and it will be the same one that you have on your desk, only this time it will just read as it was printed: "To meet this obligation, each Montana resident may take appropriate legal proceedings against any party, governmental or private, subject to reasonable limitation and regulation as the Legislative Assembly may provide by law." This is basically what is in the minority report, there is a little difference in language. I have talked about it previously and others have talked about it previously, and I think that there is no necessity to discuss it again.

CHAIRMAN GRAYBILL: Just a moment. The Chair has read both the language that you had before and the language you have now, and the Chair is going to rule your amendment in order because your previous motion said that it applied to the obligations set forth in subparagraph 1, but this one appears to apply to the obligations set forth in subparagraphs 1, 2 and 3. In other words, whatever the Legislature does, you are now giving the private party a right to enforce by legal—through a private legal remedy. Therefore it seems to me your second one is different than your first one. The Chair will allow the amendment. Do you wish to discuss it further, Mrs. Cross? You do not.
Mr. Gysler.
Mrs. Cross.

DELEGATE CROSS: This is to clarify the situation. It is being submitted as the majority report.

CHAIRMAN GRAYBILL: As the minority or majority?

DELEGATE CROSS: No, it was the minority report, basically; and this is what it goes in as.

CHAIRMAN GRAYBILL: So you want this submitted as the minority report?

DELEGATE CROSS: And that page number is 16.

CHAIRMAN GRAYBILL: So you want this to be in place of the minority report, shown on page 16. Do Mr. McNeil or Mr. Siderius object?

DELEGATE McNEIL: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: I joined in that minority report as a courtesy to my Chairwoman. I believe the motion that has been made now includes the right to sue individuals as well as the governmental agencies. I will join with Louise in urging that this section be passed, primarily because of the language added at the end—and regulate—"subject to reasonable limitation and regulation as the Legislative Assembly may provide by law."

CHAIRMAN GRAYBILL: Very well, the record may show that this is the minority report.

DELEGATE McNEIL: Mr. Chairman, may I speak briefly to this?

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: I know the majority feels, and I feel, that this is included in subparagraph 3 in the mandate to the Legislature to provide adequate remedies. Since it has been modified now to read "subject to limitations as imposed by the Legislature", I don't believe there's any substantial change, but I do recommend its adoption. Thank you.

CHAIRMAN GRAYBILL: Very well.
Mr. Harper.

DELEGATE HARPER: Yes. Mr. McNeil, I want to say, thanks. Several times today, during the previous discussion, various ones of you have looked this direction and said, "Wait until number 4 comes up". And I sat here each time waiting and seeing if you would do what you said you would do when number 4 comes up, and you are doing it, and I thank you. I think this is finally down to it—there's nowhere else to go now; can't go any farther than this. This is the end, and I hope we will pass it.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, this may be Style and Drafting. I suppose I better ask Mrs. Cross—or, Mr. McNeil, I guess I'd better ask you. Shouldn't the—

CHAIRMAN GRAYBILL: Do you yield?

DELEGATE McNEIL: I yield.

DELEGATE ARONOW: Shouldn't the clause, the last—after that last comma—"subject to reasonable limitation" and so on—shouldn't that go in after, in the first line—"each Montana resident, subject to reasonable limitation and regulation" and so on "may take appropriate"—? Do you have any objection?

CHAIRMAN GRAYBILL: Is this a matter of order of the sentence, Mr. Aronow?

DELEGATE ARONOW: Yes, it is.

CHAIRMAN GRAYBILL: Well, why don't you call that to the attention of Style and Drafting, if this passes, and maybe they can change the order of the sentence.
Mr. Brazier.

DELEGATE BRAZIER: Mr. Chairman, I'd like to direct a question either to you or Mrs. Cross. Some of the exchange kind of confused me. I thought I heard you say that the language of proposed subsection 4 would be to meet the obligations set forth in subsections 1, 2 and 3.

CHAIRMAN GRAYBILL: Well, what you heard me say was that the amendment she offered a while ago as subsection 2 specifically referred to meet the obligations set forth in subsection 1. Now, the one she offers now simply says "to meet this obligation", so I presume it could apply to any obligation that was found to arise either from subsection 1 or from some action of the Legislature under subsections 2 or 3. I merely distinguished the two motions and held that this would be a valid motion to debate, based on the fact that it now modified a different set of subsections.

DELEGATE BRAZIER: I beg your indulgence. I would just call to the attention of whoever is drafting this that I don't think we want to give any citizen the right to sue the Legislature. I think you're going to create a few enemies when you show up on June 6th. If that's what—if we don't intend that, I think we ought to refer to subsection 1 only, then, and make it more precise.

CHAIRMAN GRAYBILL: I don't—at the moment it doesn't read to me like you can sue the Legislature, but maybe you could read it that way.
Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, will Delegate Cross yield to a question?

CHAIRMAN GRAYBILL: Mrs. Cross, will you yield to a close question?

DELEGATE CROSS: I'm not sure that I want to, but I shall.

DELEGATE DAHOOD: Now, Mrs. Cross, does your proposal provide that someone from the eastern part of the State of Montana may come to the western part of Montana and file a lawsuit contending that the high-quality environment that's discussed in the first three sections has in some way been endangered?

DELEGATE CROSS: I would say that the phrase—or the part of the sentence that says "subject to reasonable limitation and regulation" would take care of that.

DELEGATE DAHOOD: Will Mrs. Cross yield to one more question?

CHAIRMAN GRAYBILL: Probably, yes.

DELEGATE CROSS: Yes.

DELEGATE DAHOOD: Now, are you not intending by this provision to provide that every citizen in the State of Montana has a right as a party litigant to start litigation anywhere in the state if they think the environment might be endangered, in their opinion?

DELEGATE CROSS: I think I could give you the same answer. I would like to remind you that, not too many days ago, you referred to the wisdom of the courts; and I presume that wisdom would be there also.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Thank you, Delegate Cross. Mr. Chairman, it is the wisdom of the courts that I want to talk about. This is nothing more than the public trust theory. I tried to keep my vow not to speak during the course of this discussion, but I think we're reaching a point now where, by the process of attrition, those who support the private property right of a free society may be very close to casting a shadow upon those rights in the State of Montana. I've been in the pollution litigation field for almost a decade. I've been for the defendant, alleged polluter; I have been for the property owner; I have been in litigation before the District Courts, before the Supreme Court of the State of Montana, before the Environmental Agency from the capital of these United States, before the State Board of Health, and at public meetings. I have listened to experts from the east coast and the west coast, from north and south—experts who have written numerous articles, some self-appointed experts. I've listened to doctors and chemists, engineers, pollution-control geniuses. I've listened to arguments with respect to what a healthy environment is and what is not; and let me tell you here and now, there is no one that come forward and tell you what a healthy environment is. I have listened to doctors who have tried to define what a healthy environment is, and not one has yet succeeded. I listened to the foremost industrial medicine expert in the United States, by reputation—more than 40 years in industrial medicine, a professor of toxicology from a large medical school in the southeastern part of the United States. His testimony was given in a court in the State of Montana, under oath. I regret that that testimony could not be transcribed for your edification here. You're all talking about a threat in Montana that is more fiction than fact. We have to raise a barrier against pollution, and everybody wants to do it, and we have raised a barrier against pollution in the State of Montana. And the environment that we have now is not going to become worse by any degree. It is going to improve. Why? Because the fight has started, and the fight has already been won, and there are agencies and there are citizens and there are scientists and there are engineers and there are captains of industry and there are leaders of labor who are fighting this problem and rolling back the tide of pollution because everyone with any sense wants pollution controlled in the State of Montana and wants a quality environment. We have a form of government that we cherish. The individual citizen bands together, organizes together, decrees government so that his rights will be better protected; and how does he do it? First, he provides through a Bill of Rights that there are certain basic principles and privileges and rights that he is entitled to have in a free society. And then, with respect to the larger areas of concern, where he needs the assistance of government for protection, he provides for that government and that government provides for him a Legislature and a State Board of Health and whatever other agency he may need so that he can be protected with respect to those matters that concern the common and general welfare. We have a State Board of Health and we have a Legislature and we have officials who are here to make sure that throughout the State of Montana we can do and will do whatever can be done within reason to maintain a high-quality environment and roll back the threat of pollution that may endanger a healthy environment. This provision that is before you now that states a private citizen, anywhere in the State of Montana, has the right to sue any other private party is an absolute imposition upon the private right to hold and enjoy property in the State of Montana; and if you want to go ahead and pass something like that, then you're going to inscribe upon the history of this state that one day in March of 1972, in Convention Hall, when you were sent here by the people to protect their rights to life, liberty and property, you took away part of that right with respect to property. You can't say that there can be reasonable regulation that's going to stop every frivolous lawsuit or that's going to stop some crusader from eastern Montana that might not like the environment in western Montana from starting that lawsuit. You can say the courts have wisdom; yes, the courts do have wisdom, and they will protect us to the best of their ability; but you give someone a constitutional right to start that lawsuit without that individual being affected with respect to his person or to his property, then how do you stop that type of litigation? There are people that like that publicity. There are people that like to be crusaders. We've watched them over the immediate decade, and they take a certain measure of satisfaction out of bringing these matters to issue. When someone is injured in person or in property, if their health is being affected, there is a nuisance that concerns them, we have all the law that is necessary now in the State of Montana to protect those rights; and I challenge any lawyer that's a delegate to this Convention to stand up and tell me, and to tell us, that a person does not have a law in the State of Montana now that will protect his right to the full enjoyment of his private property and his right to his personal good health. And I submit to you that many times you start towards a socialistic trend by well-meaning and well-intentioned legislation, by well-meaning, well-intentioned constitutional provisions. You can say, "Yes, we're going to increase the protection that you have here by doing this"; and at first impression, perhaps that is your impression; but think about it. Think about the power that it's going to give individuals to control you in the free exercise of your property right. Is that the type of restriction you want upon that particular concept that's part of everything that the American dream means to us? Let me ask—let me ask some of the delegates that support this particular provision—to point out to you how giving a private party the right to sue another private party when that person starting the lawsuit is not affected personally as to health and property is going to help the general situation. I want them to tell us, here and now, how they're going to accomplish more for a good and healthy and quality environment by allowing that type of lawsuit by an individual who is not concerned personally with respect to health and property. I say this—think very carefully. We came here to expand the rights of the individual citizen in the State of Montana with respect to those concepts of right and precious liberty that are part of the American heritage. We are here not only to make sure that the citizens of the State of Montana retain those rights, but to make sure that those rights will be protected in the future and that there will be an expansion of those rights where necessary to protect the citizen with respect to expanding government. I submit to you, today, that the proposition that's placed before you does nothing to enhance or protect the individual right with respect to life, liberty, happiness and property and, in the final analysis, takes away the free expression that citizenship is entitled to have with respect to the right to be an American citizen. I oppose the amendment.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman, Mr. Dahood is the Chairman of a committee that will report to us later on. It's entitled the Bill of Rights Committee. I have read through some of their proposals. A good many of them need not be in there, because they are already our rights, and yet we will take the time to state them and state them in some detail. This is in this same category. He says, at first, we have rights. First of all, the people do. And then we provide for government to protect the common welfare. We do. Let's assume a case of law, for example. We have the right not to be libeled; but if someone libels you, then you have redress as a person. That person has to prove that statement of libel, and if he cannot, you have some redress against him. This does not allow for any person to sue you for your private property or in some way to take away your right to private property if he cannot show the court, a sensible court, the same courts that deal with libel and all the other laws, that he has some right on his side. Now, I haven't talked to all of these emperors, kings, judges, scientists, and the rest of them—and laws—that Mr. Dahood says cannot tell the difference, really, what a healthful environment is. But I have stood at the head of the Missouri River and drunk water out of it, and I have gone in the Missouri River down below Great Falls, and I would not drink the damnable stuff, if you'll pardon a Great Falls phrase, and I know the difference. Somewhere between the start and Great Falls, something's happened to that stream, and I've got a sneaking suspicion when I stand near where a sewer empties into the stream that I know at least one of the causes. Now, I am simply saying I don't know all the legal words. I can't make the big speech about that. But somewhere in this document, I, as a citizen, should have the right to try to protect my environment and to protect that stream, and I think we're on the point right now,—and as I said a moment ago, we can't go any farther—where we ought to take our stand.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: Mr. Chairman, I think that we're in an area here where there isn't a lot of history to base our decisions on, but I've done a little research into the area and I'd like to make it available to our fellow delegates. The frivolous lawsuit is the first thing we should direct ourselves to, I think. Michigan's experience with this has been that, according to the information I have, 31 lawsuits filed since 1970—it might now be 35. Four of those were dismissed as being frivolous. A number of them were brought by private citizens; not very many. Most of them were brought by the State of Michigan or some agency thereof against some private entity that was polluting. And, certainly, I don't feel that this is a flood of frivolous lawsuits. In that regard, the Attorney General's office of the department of Attorney General in the State of Michigan writes: "Passage of this act in Michigan received a great deal of publicity all over the country and, in fact, we had letters from outside the U.S. There has not been a significant increase in the number of suits. In fact, the so-called 'flood of litigation' has failed to materialize in approximately 30 cases since the bill went into effect on October 1st of 1970. We consider Act 127 a useful tool in that it will serve to keep state agencies on their toes", et cetera. Now, in the State of Illinois they have a somewhat similar environmental provision, and the Attorney General of the State of Illinois writes: "This letter is in response to your telephone call of February 9th, 1972. The records of the Pollution Control Board of the State of Illinois show that during the period from July 1st, 1970, to January 21st, 1972, 102 enforcement cases were filed with the board. Of that total, 18 were cases filed by citizens or other private parties. The remainder of them were by governmental entities." Now, Illinois has a population of 10,977,000 people. They also have pollution problems that we haven't heard of out in this country. Michigan has a population of about 8½ million—8,778,000—over 10 times the people that we have—and they have pollution problems that we haven't heard of. So, I think the argument that there's going to be millions of lawsuits filed against all kinds of people is really, when you look at what facts we have available to base our judgment on, unrealistic. Now, if Mr. Dahood's eastern Montanan, which I am and proud of, is such a danger, the Legislature can properly limit the right to sue to the county or area in which the individual is a resident. And in this regard, I think we ought to look at what Michigan has done. First of all, Michigan does give a right to sue, but only for equitable and declaratory relief. And as I read that and as I look through some of the cases that have been filed, it appears that you really don't have the right to sue for damages. You have the right to get injunctions, writs of prohibition, writs of mandate, and so forth—the equitable remedies—or declaratory relief, but not damages. And, secondly, they have required that anyone who is going to bring a lawsuit, if they are not capable of paying the damages, has to post a bond. In this case it's $500. And there's another very practical and realistic part of this thing that has to be considered, and that's the cost of bringing litigation. Now, Mr. Dahood can tell you that to hire an expert can cost you thousands of dollars—thousands of dollars. It's going to cost you money to hire a lawyer. It's going to cost you money for filing fees, for depositions, for travel. You get into one of these environmental suits, you're up against the big boys and you'd better have 5 or 10 grand to spend, and as a practical matter, people aren't going to be bringing frivolous lawsuits. So, I submit, on the basis of what evidence we have and trusting again in the Legislature, that if we want to put in an effective environmental provision, that we should support Mrs. Cross' amendment. Thank you very much.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: Mr. President [Chairman], fellow delegates. I couldn't help thinking, when Mr. Dahood was speaking this afternoon, that if you'd put the word "liberty" in the place of "clean environment", that practically everything he said would have rung true—that the same kind of talk could be given with regard to the great American ideal of liberty—you know, that we can't define it and there'd be all sorts of litigation. What does liberty mean? You could go on, you know; if I wanted to have you—give a right for you to sue, if I took away your liberty, we could have days and days saying what that means; and yet, these are the things that have been the ideal of our country. They have been the goal. They have been—defined the quality of our life. They've been things we've fought for and have—our sons and daughters have died for. Liberty. And yet, we're saying the same kind of thing. We talk about the goal of a healthy environment. The second big point, it seems to me, as I listened, was the fact that there was, you know—the point that the Legislature and agencies are doing this kind of thing. I couldn't help asking myself, can we do less? Can we help but confirm and support what is happening by the very special stamp of approval that goes into a constitution. Lastly, I don't think I saw it until I heard the talk, and I think it's really the point of the whole discussion today. There was a talk about can you, you know, go and sue when I haven't been affected? I think that's the point. Environment is different than anything else because we are all affected. It's different than any other type of litigation, and we know this now better than we have ever known it before, so that when you talk about environment, I think you have to talk about like we're on this spaceship and we're all in it together and the survival is something that we'll do or don't do together, and so it is different than any other type of litigation we've known in the past because we are all affected.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman, I would like to move a substitute motion. The substitute motion is contained on page 17 of the Natural Resources Committee report, and it is the minority's proposal. When Mrs. Cross made her previous motion, she said it was in substance the minority proposal, but I have some of the same problems with the motion that she made that Mr. Dahood has. Seems to me that we are getting way out on a limb when we give one party and one end of the state the right to sue an individual party on the other end of the state for something for which he has, in fact, not been damaged in any way. I feel that the proper way to proceed on this thing, if we are going to put this kind of provision in the Constitution, is to direct the legal process through the appropriate governmental agency, and I think this is what the minority proposal does. It omits any reference to the private or individual party and would direct these suits through the appropriate governmental agencies, and I would move the adoption of the minority proposal.

CHAIRMAN GRAYBILL: We'll allow Mr. Harbaugh's substitute motion. Is there discussion on it?

Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I would like to stand and support the substitute motion, and I want to make it clear that my concern for the environment is the same as that of anyone else, and I want the environment protected, but I want it protected by our government, and I want it protected by our public servants in whom we have placed our public trust. I think that this particular provision should give us the protection that we seek, promote the type of environment that we need, and at the same time maintain private property rights in the State of Montana. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Mr. President [Chairman], it doesn't surprise me that Mr. Dahood supports the minority proposal, because it doesn't do anything. As I tried to indicate earlier, people in the State of Montana already have legal recourse against governmental agencies that fail to properly carry out the duties prescribed to them by the Legislature. I tried to indicate earlier that the Administrative Procedure Act of Montana specifically permits judicial review of such administrative actions. I would simply like to direct your attention one more time to what we discussed earlier in regard to standing to sue. As you know, now there is a controversy in Montana concerning the E.P.A. and the air standards. It's very likely that we are going to be living under federal air standards—not state air standards, but federal ones. As I tried to indicate earlier, in reviewing some cases of the Supreme Court, the second circuit court of appeals, and other federal District Courts, they have maintained time and time again that you do not have to show—this is a quote from one of the cases—Scenic Hudson Preservation Conference versus the Federal Power Commission—their holding in that case was that a person does not require—or a case or a controversy does not require that an aggrieved or adversely affected party have a personal economic interest. A later case, Udall versus the Federal Power Commission, substantiated that decision. A decision last year, the second circuit court ruled in the Citizens Committee for Hudson Valley versus Volpe that any time a statute of any state or the federal government is involved with the protection of natural resources, that a group has standing to sue if they are just interested that those protections are not being properly carried out by the agency. Mr. Dahood has attempted to put a smokescreen on this very issue. Like it or not, if the State of Montana doesn't take a stand, as it has so far failed to do in terms of air protection, the federal government's going to do it, and they already have in some states.

CHAIRMAN GRAYBILL: Mr. Brazier.

DELEGATE BRAZIER: Mr. Chairman, fellow delegates, I just want to clarify the record on one of Mrs. Robinson's comments. In that Hudson River case, the action was brought under a federal statute—I repeat, statute—authorizing suits against federal agencies. A similar statute could be enacted in Montana under our present Constitution, and it could be enacted in Montana under the majority proposal, subsection 1.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, I oppose this substitute motion. I had talked to a number of lawyers in this Convention about just such language as that, and everyone that I talked to, every lawyer that I talked to said, "That doesn't mean anything. You have that right now." So, as far as I'm concerned, there's no use putting meaningless language into the Constitution. I urge you to defeat this, and let's take a vote on Mrs. Cross'. You either want that or you don't, but let's not put meaningless language into the Constitution.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman, I rise to oppose the amendment of Mr. Harbaugh. I feel allowing a citizen to sue a governmental agency again is not adding anything new. I feel that Mrs. Cross' motion and proposal can be amended to be acceptable by Mr. Dahood, and I intend to do that after this vote, but I would oppose the implementation of this because it does not add anything new. And I think we could agree on amendment to Mrs. Cross', so I urge that the amendment now before us be denied—defeated.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: In reference to Delegate Blaylock's comments, I'm not aware that we already have the type of right that we're talking about in the minority proposal, and I think this type of direction to the Legislature is going to give us precisely what we want. I want to refer to the bible, *Defending the Environment*, by Joseph L. Sachs, who, of course, is the foremost proponent of the public trust theory, which is precisely what the proposal of Delegate Cross represents. And, at page 174—

CHAIRMAN GRAYBILL: Now, Mr. Dahood, I want to know if you are talking about—

DELEGATE DAHOOD: This is very brief. I am talking.

CHAIRMAN GRAYBILL: I don't care how brief it is, is it on Mr. Harbaugh's amendment?

DELEGATE DAHOOD: Yes, it is.

CHAIRMAN GRAYBILL: You just said Mrs. Cross' amendment, so—

DELEGATE DAHOOD: Well, it pertains to the amendment that we're trying to submit to the Convention at this time, Mr. Chairman, and it will point out a reason why the amendment that—

CHAIRMAN GRAYBILL: Very well, I'll listen to it; and if it's on Section 4 in the minority report, on page 16, I'll allow it; and if it isn't, I'll cut you off.

DELEGATE DAHOOD: Very well. Let me make this preparatory statement before I read it. The amendment that's before the body at this time is an amendment that will allow for legal action within the framework of the type of system of government that we have. The proposal of Delegate Cross does not do that. As Professor Sachs says in his book: "What, if any, specific benefits to the public are being provided to compensate for the losses that the proposed activity will engender"—talking about public trust. His answer: "Only when we are ready to ask such questions and to recognize the legitimacy of public rights as equivalent to traditional private property interest will we truly be on the way toward creating an effective body of environmental law." If we want to take the private property rights that have been so cherished in this country and place them at a different level than the level that they occupy now, then you will pass the type of a proposal that we are objecting to and a proposal which will not solve the problem that can best be solved by the amendment that's before this body now. I'd like to ask, at this time, if Delegate Robinson will yield to a question.

CHAIRMAN GRAYBILL: Mrs. Robinson?

DELEGATE ROBINSON: I will.

DELEGATE DAHOOD: Delegate Robinson, may I ask how you, as a private citizen, in the event that you wanted to file a lawsuit for the protection of the environment, would proceed to file that lawsuit, hire a lawyer, secure the necessary expert testimony and the scientific data that's required to be successful?

DELEGATE ROBINSON: Well, Mr.—I certainly wouldn't come to you. (Applause)

CHAIRMAN GRAYBILL: Mrs. Robinson, is there more to your answer?

DELEGATE ROBINSON: Yes. Mr. Dahood, first of all, I'm not sure what you're driving at. I think you have to recognize, first of all, that the Legislature will enact certain standards and limitations, as the Illinois Legislature did, after the enactment of that constitutional provision. I would, naturally—if I felt that I was aggrieved, I would go to an attorney and explain my case; and if he is competent, I think that he would be able to advise me whether or not, within those guidelines established by the Legislature, I would be able to proceed, or whether or not I actually had standing to sue.

DELEGATE DAHOOD: With all due respect to Delegate Robinson's answer, that answer probably represents one of the strong arguments for the motion that's before the body now. Unless you're involved with some injury to your individual health or your property, you are in no position to seek damages, and as a consequence, a lawsuit for the protection of the environment, when you are not personally affected with respect to health or property, is going to require considerable expense and considerable expertise. This is one of the practical factors. Let me submit to this delegation that we should be practical. There's no reason to get lost in theoretical clouds that seem so promising and yet, when we're down to earth, we can't make that particular proposition work. It is much better to depend upon the government that we create, upon the people that we appoint and elect to those particular positions of trust and responsibility. We have to assume that they're going to do their duty, that they're going to carry out our instructions, that they're going to carry out our constitutional command to protect the environment. We have no right to presume that they will not do that. We need the power of the state. We need the power and the material of organized society to get the job done right. It's nice to have high-sounding platitudes or even sermonettes in the Constitution, but if you don't have the power and the material to implement that particular protection as is required under the system of law that we have, then we are really giving to the citizens of Montana nothing but an empty hope. I submit to you, we all want the same objective, we all want the same result. Let's be practical citizens and reasonable citizens and intelligent citizens, and let's get it done in a way where it's going to work for the benefit of all of us and for the progress of the State of Montana. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, we have the matter before us, we've had it all afternoon and all morning, and we're gradually getting to a point where we might be able to decide something. I cannot see why we should accept this substitute offered, because it does not provide us any relief. It's just saying "boo". I think that the thing we should do is to vote it down and accept the Cross one—the original motion. We have matters besides this to go on in this proposition, and I think it's time that we got ahead with it and voted.

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: Mr. President [Chairman], in our deliberations today, there was one question that I had in mind, especially in regard to Mr. Dahood's testimony. And, in fact, if you will allow me—if I am not out of order, I would like to ask him a series of questions; but before I do, I want to let you know what I am going to ask him questions in regard to, and that is, in Rule 20 of our rules to the Convention, it says "Any delegate who has significant personal or private interest, economic or otherwise, in a matter before the Convention shall disclose this interest to the Convention." Now, that is the sense of what I am going to ask Mr. Dahood. Am I out of order?

CHAIRMAN GRAYBILL: Right. Well, the Chair will rule that Mr. Dahood has already disclosed that issue. He pointed out that he had represented numerous clients on both sides of the environmental issue, which the Chair happens to know is true, and I think he's declared his interest. Therefore, I'll rule you out—No, you don't have the floor, Mr. Dahood—Therefore, I'll rule you out of order, Mr. Monroe, unless you want to discuss Mr. Harbaugh's substitute motion. He has disclosed his interest as an attorney that handles these kinds of cases—this type of case.

DELEGATE DAHOOD: (Inaudible)

CHAIRMAN GRAYBILL: You can if you are going to talk on Mr. Harbaugh's substitute motion.

DELEGATE DAHOOD: I just wanted to point out—(Inaudible) has to do with the private property owner against a large corporation. I represent the private property owner.

CHAIRMAN GRAYBILL: Very well. All right, now, are we ready to vote on Mr. Harbaugh's motion or not? Is there other discussion?

Mrs. Babcock.

DELEGATE BABCOCK: May I please know which amendment it is?

CHAIRMAN GRAYBILL: Yeah, I'll read it before we vote. It's on page 15, Mrs. Babcock. Is there other discussion?

Mr. Campbell, I see you up. Do you want to discuss?

DELEGATE CAMPBELL: Just a question, Mr. Chairman. Would a substitute motion be in order at this time?

CHAIRMAN GRAYBILL: No, we have one substitute motion.

DELEGATE CAMPBELL: Thank you.

CHAIRMAN GRAYBILL: Mr. Harbaugh, you may close. Oh, wait a minute.

Mr. Barnard, did you want to say something?

DELEGATE BARNARD: Mr. President [Chairman], I rise on a point of information. Supposing we adopt Section 4 of the minority proposal and some individual citizen wants to bring an action against some division of the federal—or of the local—the state government, will they have to bring that on their own, pay their own way; or is there some provision where they can file objection with some of the authorities?

CHAIRMAN GRAYBILL: Well, the law presently is they'd have to pay their own way, and the law would probably be they'd have to pay their own way here, unless the Legislature put in a different subrule. But this provision would certainly leave it having them paying their own way.

DELEGATE BARNARD: That's what I thought.

CHAIRMAN GRAYBILL: Is there other discussion?

Mr. Harbaugh, do you want to close?

DELEGATE HARBAUGH: Yes, I'll close. I'd just like to point out that this provision of the minority proposal is signed by three members of the committee, and I think that several times throughout this discussion it's been pointed out that the committee has done a great deal of work on its proposal, and I think we ought to respect that. It seems to me that this is a much more well-thought proposal than the previous motion, and I would urge that it be adopted.

CHAIRMAN GRAYBILL: Very well, I take it you want a roll call vote. Very well, all those in favor of Mr. Harbaugh's—well, first of all, I want to explain, Mrs. Babcock, it's the minority proposal on page 16, subsection 4, there, that we're voting on. Those in favor of this minority proposal giving any Montana resident the right to appropriate legal proceedings against any governmental agency charged by law with the implementation or enforcement of any provision of the article —those in favor, please vote Aye; and those against, please vote No. Mr. Kelleher, you may be recognized and you may vote. Mr. Kelleher's presence is recognized in the journal.

Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, we'll take the ballot.

Aasheim	Aye
Anderson, J.	Aye
Anderson, O.	Aye
Arbanas	Nay
Arness	Absent
Aronow	Aye
Artz	Nay
Ask	Aye
Babcock	Aye
Barnard	Nay
Bates	Aye
Belcher	Aye
Berg	Aye
Berthelson	Aye
Blaylock	Nay
Blend	Aye
Bowman	Nay
Brazier	Nay
Brown	Nay
Bugbee	Nay
Burkhardt	Nay
Cain	Nay
Campbell	Nay
Cate	Nay
Champoux	Nay
Choate	Aye
Conover	Absent
Cross	Nay
Dahood	Aye
Davis	Aye
Delaney	Nay
Driscoll	Aye
Drum	Aye
Eck	Nay
Erdmann	Aye
Eskildsen	Aye
Etchart	Aye
Felt	Absent
Foster	Nay
Furlong	Nay
Garlington	Nay
Gysler	Absent
Habedank	Aye
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Aye
Harlow	Nay
Harper	Nay
Harrington	Aye
Heliker	Nay
Holland	Aye
Jacobsen	Absent
James	Nay
Johnson	Nay
Joyce	Nay
Kamhoot	Nay
Kelleher	Nay
Leuthold	Nay
Loendorf	Nay
Lorello	Aye
Mahoney	Excused
Mansfield	Nay
Martin	Aye
McCarvel	Aye
McDonough	Nay
McKeon	Nay
McNeil	Nay
Melvin	Nay
Monroe	Nay
Murray	Aye
Noble	Nay
Nutting	Aye
Payne	Aye
Pemberton	Nay
Rebal	Nay
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	Nay
Rygg	Aye
Scanlin	Nay
Schiltz	Nay
Siderius	Nay
Simon	Nay
Skari	Nay
Sparks	Nay
Speer	Nay
Studer	Aye
Sullivan	Aye
Swanberg	Absent
Toole	Excused
Van Buskirk	Nay
Vermillion	Nay
Wagner	Aye
Ward	Nay
Warden	Nay
Wilson	Aye
Woodmansey	Aye
Mr. Chairman	Nay

CLERK HANSON: Mr. Chairman, 37 delegates voting Aye, 55 voting No.

CHAIRMAN GRAYBILL: 55 having voted No, and 37 having voted Yes, that motion fails, and we're back on Mrs. Cross' amendment. Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, I move that the committee rise and report progress and beg leave to sit again.

UNIDENTIFIED DELEGATES: No.

CHAIRMAN GRAYBILL: Very well, we'll take a vote on that. There is a social activity tonight, and I don't know whether we can finish this issue or not. But if you care to, we'll start here again tomorrow morning; or we'll complete. All those in favor of rising and reporting, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is in doubt. All those in favor of rising and reporting, vote Aye; opposed, No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, 47 having voted No, 45 having voted Aye, we will not rise and report. Mr. Etchart, would you take the Chair?

(Delegate Etchart in Chair of Committee of the Whole)

CHAIRMAN ETCHART: The Committee of the Whole will please be in order.

Delegate Graybill.

DELEGATE GRAYBILL: Mr. Chairman, I understand that we are debating Mrs. Cross' motion, and I would like to discuss this briefly since I have some views on it that are rather strong. First of all, I have listened carefully to my learned brother, Mr. Dahood, and I am impressed by what he says, because I think what he says is correct; but I would like to point out to you that his result might not necessarily be the best. I think the issue is, as he has stated it, whether or not we wish to sustain property rights in our Constitution for its term or whether we want to enlarge human rights in our Constitution by this amendment. Now, the issue is—let's get the issue clearly out—the issue is, do we want to give people the right to sue for environmental damage to the entire environment. Now, Mr. Dahood is absolutely right that at the present time, people cannot sue unless they can show damage. People cannot sue unless they can show damage. The people whose trees are hurt at Columbia Falls can sue. The people whose cows are hurt, in the case Mr. Dahood had, can sue. But the rest of the people cannot sue because they cannot show damage. Now, the issue is—and this is a national issue—the issue is, should we enlarge the people's right to sue in the environmental case. The argument in favor of it is that the environment is, in fact, all of our environment and the damage, because it is slow—I could use the nasty legal word "insidious"—but in any event, the damage is slow and rising slowly, and no one individual, except those right in the immediate vicinity, can show an immediate damage, but clearly everyone can show a damage in the long run. Awhile ago, Mr. Dahood said, "Can someone come from eastern Montana and sue in western Montana because they're despoiling the mountains or lumbering wrong or doing something else?", and he thinks that would be a terrible thing. First of all, it wouldn't necessarily happen. It would depend on the Legislature. But the point is that, once the mountains in western Montana have been despoiled, it's just as despoiled for someone that lives in Glendive as it is for someone that lives in Missoula; and that's the point of enlarging the right. Now, the purpose here is not to enlarge the right in all cases, not to say that you can sue in automobile accidents unless you have damage, not to say you can sue in other private cases unless you have damage, but to say that in the environmental case only, the question is, "Should we enlarge the right and let private citizens help enforce it?" Now, Mr. Dahood is also absolutely right when he says that we have good agencies that try to enforce these rights. The trouble is that sometimes the good agencies get thwarted. The trouble is that sometimes the good agencies get lazy or turn out to be not-so-good agencies. Then the question is whether you're going to enlarge the right of the people to come in and sue individually. Now, of course, Mr. Dahood is again right when he says it's terribly expensive and it requires experts and it requires competent lawyers and it requires months of testimony. He's absolutely right; and if the neighbors are poor and don't want to do it and if the environmental agency doesn't do it for some reason—it's already overextended, its appropriation is gone, or something else—then no one will do it unless you enlarge the right of the individual to sue. So, that's your issue. I know how I'm going to vote. You all know how I'm going to vote, and I know how many of you are going to vote. But the issue is, "Are we going to enlarge this right in the environmental area only?" Now, there's one other thing that I want to deal with. Mr. Dahood is only wrong, if he's wrong at all, in one little area, and that is that some parade of horribles is going to happen if we enlarge this right. He's wrong because, in the first place, it isn't necessarily wrong for a man in eastern Montana not to want the air quality or the mountains or the streams of western Montana to be despoiled. The fact of the matter is that he may have just as much of an interest in the mountains and the streams as the man that is right close. So it isn't necessarily wrong. Secondly, the provision that we're debating here says that the Legislature may enact suitable legislation to carry this out and the Legislature may prescribe, in any manner that it sees fit, that's reasonable, this right. Now, one manner that it might see fit would be to limit the people who could bring an environmental case to the county or the area involved. Mr. Dahood and all the lawyers here know that it's possible—not always done, but it's possible for the Legislature to limit the area in which you can bring a suit. Sometimes you can only bring a suit in the county where the incident occurs, and that could be done by the Legislature if, in fact, the Legislature found that it was a terrible thing to let people from eastern Montana defend western Montana. Thirdly, just this last year, the Legislature did something quite interesting. It passed a law that in certain lawsuits, if the court finds that the lawsuit is—it doesn't even have to be frivolous—if the court just finds that the defendant was really wronged by having this suit brought against it, then the court may assess all the court costs and, in fact, attorney fees against the plaintiff. This little old law that the Legislature could pass would clear all these bad situations up, because then the environmental plaintiff would have to be sure he was right or he'd pay all of Mr. Dahood's and my attorney fees, if we're on both—if we're on opposite sides. So there are plenty of ways to avoid the parade of horribles, all in the hands of the Legislature, all in the hands of the people. The problem is not the parade of horribles. The problem is whether you want to, here in Montana, because of our environment, grant a right to plaintiffs that is greater than we have granted before. And when you vote on this—whether you do it today or tomorrow—that's what you are going to decide. Thank you.

CHAIRMAN ETCHART: Mrs. Bowman.

DELEGATE BOWMAN: Mr. Chairman, until Mr. Graybill spoke, I wasn't sure I knew what Mr. Dahood said (Laughter) except that I knew he said it very well. I got a few notes down and would like to amplify for just a minute, if I may. Mr. Dahood says that Mrs. Cross' amendment is an imposition on private right to hold private property. I do not believe that this is the case. I think that none of us is intending to impose [upon] the private right to hold private property. What we're trying to do is to decide what we're going to do with the private property. I believe that that's our concern. I think that we in eastern Montana are just as affected by what goes on in western Montana as the people in western Montana. This environment is a chain reaction. Again, if you're that worried about it, the Legislature, according to Mrs. Cross' amendment, can make provisions which will keep us from going into western Montana. Nowhere in this do I see any implication of the right to sue for damages. I think that Mr. Dahood said that the governmental agencies are doing their duty. Perhaps they are. I think that if they do do their duty, the necessity for suits diminishes greatly. I do not believe that the environment is going to improve under the situation that we have now. I think the fight has started, but I don't think it's anywhere nearly been won. In fact, I think we have recently suffered a very great defeat as far as our air-quality standards are concerned. I would like to urge this committee to adopt Mrs. Cross' amendment. Thank you, Mr. Chairman.

CHAIRMAN ETCHART: Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman, the various lawyers and other individuals—I'll include a lot of you—have been waving a red herring around here all day, and you've been waving it so long it's beginning to smell bad. Now, that red herring has been the thought and the implication that an individual, myself, can come over here and sue Mr. Dahood and appropriate his law practice and his home. I can't find anything in any of the words in Mrs. Cross' amendment that allows any individual to take the private property away from any other individual. That has been shouted from the mountaintops and from the prairies—that this public trust, if you want to use that word, or that this amendment of Mrs. Cross' allows someone to go and take the property, private property, away from the other person. Now, if I'm wrong, I want some of the learned legal profession to come up and tell me so; but that is not true. All you can do is sue. You can't take the man's property away from him. If he's polluting, you can sue to have him stop polluting. When you sue the company that is polluting—the suits against the Anaconda Company at Columbia Falls, the suits against Hoerner Waldorf in Missoula, or the suits against the company in Garrison doesn't in any way bring—allow the people to take over the property of the Anaconda Company in Columbia Falls, nor any other property, so why are you continually waving this red herring around that this will allow people to take over other people's private property? It does not. All it does is allow you to protect yourself from the pollution that is being created by some other private individual. So I am hoping that now you have reached your senses and will support Mrs. Cross' amendment.

CHAIRMAN ETCHART: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, awhile back I thought I heard one of our younger delegates say that he wanted to make a suggestion on this. Will Mr. Campbell yield to a question?

CHAIRMAN ETCHART: Mr. Campbell, would you yield to a question?

DELEGATE CAMPBELL: I will yield.

DELEGATE SCANLIN: Was there some suggestion that you wanted to make for clarification on this, Delegate Campbell?

DELEGATE CAMPBELL: No.

DELEGATE SCANLIN: Thank you, Mr. Chairman.

CHAIRMAN ETCHART: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I've been a little hesitant to speak a great deal about this measure here. I feel very strongly about it because I live in a community where we have one of those problems such as Missoula has, although it does not affect my home or my city, but certainly, as a Montanan enjoying the splendor and majesty of Glacier National Park, I am concerned about the aluminum plant at Anaconda—or at Columbia Falls—the Anaconda aluminum plant. I'm concerned also for those approximately 1,000 people who are working there. I am concerned because some man who could post a $500 bond and could hire a lawyer could bring an action which might enjoin the operation of that plant and which might put those 1,000 people out of work for a period of three years while the litigation was being settled and concluded. Now, that man might not have the money to pay the wages of those working people for those three years. That man might not have the money or the ability to pick up the mortgages on the homes of those people. He might not have the money to retrain them and place them elsewhere. He might not have the means to restore to that community what he will have taken from it by the payment of an attorney's fee and a bond. And, so, my position in this matter is that Sections 1, 2 and 3 are as strong or stronger than any that I have seen and that we should not proceed with the allowing of private lawsuits, because I think it is to the detriment of the workingman in Montana if we do so. Now, let us think about this for a moment, too. Industry in Montana now is regulated by our Legislature. Industry in Montana now is making progress to solve the pollution problems that exist, and I agree that they exist. Industry now is pouring most of its profit in the efforts to control and to improve the environment—to control the pollution problem. If industry cannot make money, it shall close. Industry, if it is not making money, has no reason to stay in existence. It is the workingman who ultimately loses when industry closes, and so, I stand in support of the workingman in my community and I resist Mrs. Cross' motion.

CHAIRMAN ETCHART: Mr. Graybill.

DELEGATE GRAYBILL: Now, Marshall, you know as well as I do that no court in the country is going to close the plant until after the case is over.

CHAIRMAN ETCHART: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I merely want to respond to Delegate Harlow's statement. I don't think any of my comments or arguments were intended to indicate to anyone here that some private citizen, through a private lawsuit, is going to take private property in the sense that there will be an actual physical possession of that property. No one has, within the State of Montana. That can only be done with respect to public purpose under the eminent domain provision of the Constitution of this state. But when you restrict the right of an individual to use his private property, that is contrary to the tradition in this state and in this nation; and sometimes there can be enough restriction so that there is an actual taking of the right to enjoy that property, and that does conflict with the basic constitutional guarantees that we have. If a private individual can go to a private property owner and say, "I don't like the way you're using that property because, in my judgment, that is injuring the environment and in the years to come, because environment is the total concept—it's part of a total life-sustaining system, it's going to injure me", that is going to restrict the use of that property. If the Legislature says from this constitutional command, "We shall set up some administrative body" that requires that whenever I want to add to my property or improve it or do something to it, that I have to have some administrative license to do it so that the environment is going to be protected in the judgment of this constitutional command, then I am taking the right to use that property as a free citizen and I am destroying a basic right of citizenship in a free society. Thank you.

CHAIRMAN ETCHART: Mr. Robinson.

DELEGATE ROBINSON: Yes. Will Mr. Murray yield to a question?

CHAIRMAN ETCHART: Will you yield?

DELEGATE MURRAY: I'm shaking, Mr. Chairman, but I will. (Laughter)

DLEGATE ROBINSON: Mr. Murray, I was wondering if you knew Illinois has the same provision that we are trying now to get in [the] Montana Constitution. Do you know how many companies or how many industries have been closed in Illinois because of this?

DELEGATE MURRAY: I can't answer your question, Mrs. Robinson. I don't know.

DELEGATE ROBINSON: Mr. Chairman.

CHAIRMAN ETCHART: Mrs. Robinson.

DELEGATE ROBINSON: I know—(Laughter)—none. And nobody has been unemployed because of this—not one person. Also, I do know that the State of Montana, the State of Illinois, also, grant variances in which time any polluting company has time to comply with these things. I would merely like to suggest here that one man's rights end where someone else's begins, and this is the question we have to deal with here.

CHAIRMAN ETCHART: Mr. Berg.

DELEGATE BERG: Mr. Chairman, I've refrained all day from arising regarding this problem, because in most respects it's really not my problem, but it does now appear to me that it is becoming, and will become in my community, a very serious problem. I want to call your attention to the next sections with regard to water rights and to the last sentence of subparagraph 5 on page 4. "No appropriation shall be denied except when such denial is demanded by public interests." Now, Gallatin County depends upon irrigation. When water is taken from the Gallatin—

CHAIRMAN ETCHART: Now, Mr. Berg, would you stick with subsection 4, please?

DELEGATE BERG: I'm with it. I'm with it, really. When water is taken from the Gallatin River for irrigation and it's put back into the stream, as the law necessarily requires it to be put back, it's not clean water. It's dirty water, and there are times when people—this interferes unquestionably with the recreational use of that stream, and here you have on our local level the very problem Mr. Dahood is talking about on an individual basis. The question will arise under this situation whether an individual—take a fisherman, can stop the irrigation of that stream on that land because it interferes with a recreational right for which he can show no damage but which, if he does, is certainly going to affect the economy of Gallatin County. This is a very important factor to me when you consider the question of whether one citizen may sue another or prevent another from an activity that is of economic interest. What is the public interest here, in Gallatin County—recreation or agriculture and irrigation? This is fundamental.

CHAIRMAN ETCHART: Mrs. Cross.

DELEGATE CROSS: I was just going to request if I could close, Mr. Chairman.

CHAIRMAN ETCHART: Mrs. Eck.

DELEGATE ECK: I'd just like to make one remark before she closes, and that is that we, without hardly a murmur, passed subsection 3 which indicates that the Legislature will provide remedies. It seems now that a lot of you who passed subsection 3 and approved it didn't really intend for the Legislature to provide these remedies. I think that this section of Mrs. Cross' allows the Legislature to limit the power and yet it does guarantee the citizen that he does have this right, and I think that under this kind of provision, the Legislature is pretty sure to enact the necessary limitations. Thank you.

CHAIRMAN ETCHART: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, it was the consensus of the majority of the committee that a section like this was not necessary when a section like number 3 is written in, and this is the reason that the majority did not go along with the right to sue provision, because we felt that there were so many open ends to it. In regard to the statement that Mr. Cate read—the letter that Mr. Cate read from Illinois—I have also got that statement. He did not read the bottom of the page, where you get into the other—towards the end of the letter, Jerry—where you get into the other court cases which are starting—which are increasing, but they didn't say to what extent. They said that they had not as yet reached the flood stage. The thing is that, any time a provision is enacted, it takes awhile for the people to find out that it's there and how it works. If this provision is, as that letter from the Attorney General of the State of Illinois said, that this is an—the cases are increasing, then it leaves very serious doubts in my mind as to just what we are doing. Just one more point I want to make—or maybe two. First, I'd like to tell Delegate Harper that if it hadn't have been for the city of Fort Benton about 10 or 15 years ago going to court and requiring the city of Great Falls, at that time, to put in a sewage treatment plant, that water probably wouldn't be that pure; and unless something happens, we'll probably do it again. Now, this proposed amendment—everybody says, "Well, the Legislature is going to do it; the Legislature is going to provide the guidelines." It is the contention of the majority that subsection 3 has already directed the Legislature to provide the guidelines on this. If the Legislature so desires to enact, along with the restrictions—which most of you people who advocate the right to sue seem to advocate, that there is restrictions in there; they want to put the right to sue in and put all of the legislative wording in that it takes to guarantee one right and then guarantee the other right, fine. It is the majority's view that this is a legislative problem and the Legislature should handle it all the way through.

CHAIRMAN ETCHART: Mr. Conover.

DELEGATE CONOVER: Will Mr. Dahood yield to a question?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE CONOVER: Mr. Dahood, I am a farmer, as you know. For example, we do strip farming and block farming; and you know what these winds are in Montana; and if you come through my area and the dust is so thick that you can't see in front of you, what are you going to do about it?

DELEGATE DAHOOD: I probably would be very understanding, but I know people in the State of Montana that would not be sufficiently understanding, and you'd probably have a lawsuit because you're affecting the high-quality environment, Mr. Conover.

CHAIRMAN ETCHART: Mrs. Cross, would you care to close? Will you close?

DELEGATE CROSS: I would like to close this on a little bit of philosophical thought, if I may, and I will quote from a statement I made—oh, I suppose it's about 10 days ago: "Between the knowledge that our economy must proceed and that man must rise above his own immediate gain, the delegates to this Convention must decide what they shall do. I have been aware of the pressures that will come, indeed are coming, pressures from those who must return money to their investors, pressures from those who must promote employment, pressures from those who must maintain a tax base, and pressures from those who fear the loss of a livelihood. Somehow, your elected delegates must exercise prudent judgment without yielding to pressures not commensurate to the cause that we all must serve. If beasts and birds abound no more and fish grow scarce on every shore, what chance have you and I, my friend, to meet a different, gladder end?" Thank you.

CHAIRMAN ETCHART: Members of the committee, you have before you for your consideration the proposed subsection 4 as outlined by Delegate Cross, and you will have a roll call vote. As many as are in favor will vote Aye; as many as are opposed will vote No. Has every member voted?

(No response)

CHAIRMAN ETCHART: Does any member wish to change his vote?

(No response)

CHAIRMAN ETCHART: If not, the clerk will record the vote.

Aasheim	Aye
Anderson, J.	Nay
Anderson, O.	Nay
Arbanas	Aye
Arness	Absent
Aronow	Nay
Artz	Aye
Ask	Nay
Babcock	Nay
Barnard	Nay
Bates	Nay
Belcher	Nay
Berg	Nay
Berthelson	Nay
Blaylock	Aye
Blend	Nay
Bowman	Aye
Brazier	Nay
Brown	Aye
Bugbee	Aye
Burkhardt	Aye
Cain	Aye
Campbell	Aye
Cate	Aye
Champoux	Aye
Choate	Nay
Conover	Nay
Cross	Aye
Dahood	Nay
Davis	Nay
Delaney	Nay
Driscoll	Nay
Drum	Nay
Eck	Aye
Erdmann	Nay
Eskildsen	Nay
Felt	Absent
Foster	Aye
Furlong	Aye
Garlington	Nay
Graybill	Aye
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Nay
Harlow	Aye
Harper	Aye
Harrington	Aye
Heliker	Aye
Holland	Nay
Jacobsen	Nay
James	Aye
Johnson	Nay
Joyce	Nay
Kamhoot	Nay
Kelleher	Aye
Leuthold	Aye
Loendorf	Aye
Lorello	Nay
Mahoney	Excused
Mansfield	Nay
Martin	Nay
McCarvel	Nay
McDonough	Aye
McKeon	Aye
McNeil	Aye
Melvin	Aye
Monroe	Aye
Murray	Nay
Noble	Nay
Nutting	Nay
Payne	Aye
Pemberton	Nay
Rebal	Nay
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Aye
Romney	Aye
Rygg	Nay
Scanlin	Aye
Schiltz	Aye
Siderius	Aye
Simon	Nay
Skari	Aye
Sparks	Nay
Speer	Aye
Studer	Nay
Sullivan	Nay
Swanberg	Absent
Toole	Excused
Van Buskirk	Aye
Vermillion	Aye
Wagner	Nay
Ward	Nay
Warden	Aye
Wilson	Nay

Woodmansey .... Nay
Chairman Etchart .... Nay

CHAIRMAN ETCHART: 44 having voted Aye, 54 having voted No, the motion has failed.

(President Graybill resumes chairmanship of the Committee of the Whole)

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, I'll try it one more time. I didn't make that motion to stop the debate. I made that motion for a reason, and that was for one of our delegates who is giving a party tonight and so that all of us would have a chance to attend on time. That was the only reason, no other. So with that, I move that when this committee—I move this committee rise and report progress and beg leave to sit again.

CHAIRMAN GRAYBILL: The motion is that this committee rise and report progress and beg leave to sit again. We are not adjourned. All in favor, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed.
(No response)

CHAIRMAN GRAYBILL: Very well, as soon as the journal clerk gets the report ready, we'll be ready to move on.

(President Graybill in Chair of Convention)

PRESIDENT GRAYBILL: The Convention will be in order. Will the clerk please read the title of the report of the Committee of the Whole.

CLERK HANSON: "March 1st, 1972. Mr. President. We, your Committee of the Whole, having had under consideration Report Number 6 of the Committee on Natural Resources and Agriculture, recommend as follows:"

PRESIDENT GRAYBILL: Does anyone care to have the Committee of the Whole report read in full?

DELEGATES: No.

PRESIDENT GRAYBILL: Very well. Mr. Eskildsen, will you make a motion for its adoption?
Mr. Eskildsen.

DELEGATE ESKILDSEN: I move the adoption of the Committee of the Whole report.

PRESIDENT GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.
(No response)

PRESIDENT GRAYBILL: The motion to rise and report progress is passed, and we'll—I take it we all know that Mrs. Babcock has invited us to dinner, and I think I'll make that announcement once more.
Mr. Eskildsen, have you another motion?

DELEGATE ESKILDSEN: I move we stand adjourned until 9:00 a.m., Thursday, March 2nd, 1972.

PRESIDENT GRAYBILL: The motion is to adjourn until 9:00 a.m., tomorrow morning. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.
(No response)

PRESIDENT GRAYBILL: So ordered.

(Convention adjourned at 5:35 p.m.)

March 2, 1972
9:20 a.m.

Thirty-Sixth Day

Convention Hall
Helena, Montana

PRESIDENT GRAYBILL: The Convention will be in order. If you'll all please stand, Reverend Harper will lead us in the invocation this morning.

DELEGATE HARPER: Our Father, we do believe that you guided our fathers to build in this land a nation of the people, by the people and for the people. You gave them the faith to believe that they may become one in spirit, bound by the ties of liberty and justice for all. Now, give us that faith again. Remove from our minds all bitterness and contempt for one another and replace, this morning, a renewed dedication to serve the least, last and lost, that will bind us not only again to each other in harmony, but will link us again in heart with your Son who said, "Inasmuch as you've done it to one of the least of these, my brothers, you've done it to me." Amen.

PRESIDENT GRAYBILL: We'll take attendance by voting Aye on the voting machines.

CLERK HANSON: Mr. President, may Delegates Campbell and Payne be excused?

PRESIDENT GRAYBILL: Campbell and Payne, yes. Mr. Kelleher is excused.

CLERK HANSON: Delegate Robinson, Delegate Toole, Delegate Robinson, Delegate Toole.

PRESIDENT GRAYBILL: Very well, please take attendance.

Aasheim	Present
Anderson, J.	Present
Anderson, O.	Present
Arbanas	Present
Arness	Present
Aronow	Present
Artz	Present
Ask	Present
Babcock	Present
Barnard	Present
Bates	Present
Belcher	Present
Berg	Present
Berthelson	Present
Blaylock	Present
Blend	Present
Bowman	Present
Brazier	Present
Brown	Present
Bugbee	Present
Burkhardt	Present
Cain	Present
Campbell	Present
Cate	Present
Champoux	Present
Choate	Present
Conover	Present
Cross	Present
Dahood	Present
Davis	Present
Delaney	Present
Driscoll	Present
Drum	Present
Eck	Present
Erdmann	Present
Eskildsen	Present
Etchart	Present
Felt	Present
Foster	Present
Furlong	Present
Garlington	Present
Graybill	Present
Gysler	Present
Habedank	Present
Hanson, R.S.	Present
Hanson, R.	Present
Harbaugh	Present
Harlow	Present
Harper	Present
Harrington	Present
Heliker	Present
Holland	Present
Jacobsen	Present
James	Present
Johnson	Present
Joyce	Present
Kamhoot	Present
Kelleher	Excused
Leuthold	Present
Loendorf	Present
Lorello	Present
Mahoney	Present
Mansfield	Present
Martin	Present
McCarvel	Present
McDonough	Present
McKeon	Present
McNeil	Present
Melvin	Present
Monroe	Present
Murray	Present
Noble	Present

Nutting	Present
Payne	Excused
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present

CLERK HANSON: Mr. President, 97 delegates present, 3 excused. [Editor's note: The official record shows 98 present, 2 excused.]

PRESIDENT GRAYBILL: Very well. Mrs. Robinson, your attendance is noted. Mr. Campbell, you were excused, but you're here.

DELEGATE CAMPBELL: As of 10 o'clock, Mr. Chairman.

PRESIDENT GRAYBILL: I see, after 10:00. Very well. The journal may show the attendance and a quorum. Order of Business Number 1. Mr. Clerk, have you a report from Style and Drafting?

CLERK HANSON: The Committee on Style and Drafting submits to the Convention Style and Drafting Report Number 3 on the Legislative Committee.

PRESIDENT GRAYBILL: The Style and Drafting report on the Legislature has been submitted and is hereby placed on General Orders. I understand it's been printed and will—or being printed and will be put on your desks in the next hour. Without objection, the Chair would like to move to Order of Business Number 8, Unfinished Business. I would like to explain to you a little bit about the story in the paper this morning on the HUD funds, because I think it's important that you all understand the situation. The story in the paper results from an open meeting that the Planning Board had yesterday and is essentially correct, but not, perhaps, entirely correct. As you know, we have been applying for federal funds for some time, and Mr. Baucus has been handling the application and it has been progressing. We had a major meeting about a week ago with a number of the people, both here in town and some of them from Denver. And we were told that we would probably get some funds. Yesterday, the Planning Board was—which is the conduit for our funds from HUD—Housing/Urban Development—the Planning Board got oral verification from Denver, after our application had been put in, that it was likely we would get the funds, and that is the source of the story in the paper. The problem is that the Convention management does not like to say we have the funds, because we really haven't got the funds yet and there are still some problems to be worked out. Without boring you with all the details, one of the problems is that HUD funds generally arrive 60 to 90 days after you begin to ask for them by showing your chits. Obviously, that puts us into the summer and it's not going to be too meaningful to us immediately. So the problems that we're working out are ways that we can get some of the money advanced from the state on a payback basis. All of these sort of things have to be worked out, and Mr. Roys in the Planning Office has to be satisfied that this can be done. And Mr. Baucus and I met with him last night, and we are still negotiating and working on these problems. And I would say that it is likely that we will have the funds available, but they are certainly not in our budget or payroll yet. So, I just wanted everybody to understand that. My present plans—unless we get written confirmation from Denver, our present plans are to report the budget this week to you in the same manner—that is, with the same total moneys—as last time. But I would hope that by the next budget report, we would have official written confirmation, and then we would adjust the budget to show the federal funds. But I want you to know what's happening, because—and we're not too concerned. I think the article in the paper will solidify everyone's thinking on the matter. But the reason it has not been announced by us is because we don't have the money yet. Very well. Before we go into Order of Business Number 10, I think it might be proper for me to—on behalf of those of us who were able to attend, to personally thank Mrs. Babcock and Mr. Babcock for the very fine social function that we enjoyed at their home last night. And, Mrs. Babcock, we thank you. (Applause) If I may be allowed a personal joke, I now understand why Betty sometimes comes late. I said, "If you do the housework in this house before you come, I can see why you'd be late." We'll move to Order of Business Number 10.

Mr. Eskildsen.

DELEGATE ESKILDSEN: I move the Convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders.

PRESIDENT GRAYBILL: Very well. The motion is to move the Convention into Committee of the Whole. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

(No response)

PRESIDENT GRAYBILL: The Ayes have it.

(Committee of the Whole)

CLERK HANSON: The following committee proposals are now on General Orders: Natural Resources, Revenue and Finance, Bill of Rights, Education, Public Health, Local Government, General Government, Style and Drafting Number 3. Mr. President.

CHAIRMAN GRAYBILL: Very well. We're on Natural Resources report—Proposal Number 6 this morning. And my understanding is that we had adopted subsection 1, subsection 2 and subsection 3 of Section 1 yesterday, as amended; we had defeated subsection 4. Before we wrap up subsection 1, are there any other subsection 1 amendments?

Mrs. Bates.

DELEGATE BATES: Mr. President, fellow delegates. I would like to move that we add one more section here. I think our Chairman has a copy. Would you like to read it?

CHAIRMAN GRAYBILL: Will the clerk please read it.

CLERK HANSON: "Subsection 5—"

CHAIRMAN GRAYBILL: It could be subsection 4.

CLERK HANSON: —4, yes. "In order to maintain a more healthful environment, smoking shall be prohibited in public buildings. The Legislature shall enact laws for the enforcement of this clean air provision. Signed: Bates."

DELEGATE BATES: Mr. President.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: In all sincerity, I truly believe that this could be done and should be done. I understand that the Health, Education and Welfare in Washington, D.C. has now prohibited smoking within that building and many other buildings in the state—in the Capitol proper. Why should people who do not smoke have to be subjected to this pollution? Not only that, maybe this should be in Finance and Revenue, because I feel that maintaining an upkeep of our buildings is a terrific cost. Anyone that cleans up after a smoker knows that cleaning must be much more frequent—scrubbing and cleaning. The pollution in Los Angeles, even though the smog is thick, washes up easier than a room that has had constant smoking in it for a year. It takes industrial cleanser to remove the brown off the white buildings. This is not only for our benefit, your benefit as well. And look at our painting up here. Do you recall how much it cost to renew that into—so that we could protect it and keep it for awhile longer? If you look at our ceilings here, you can tell the effects of the smoke. It hasn't been too long since it was renewed. Mr. Chairman, I move for this.

CHAIRMAN GRAYBILL: Very well. Is there any discussion?

Mr. Harlow.

DELEGATE HARLOW: I heartily support Mrs. Bates' motion. I have suffered from the smoker ever since I was a small boy. I used to have to ride on the streetcars back in the olden days. And I realize that a number of you feel that this is an infringement on your public rights or your private rights. I feel that it is an infringement upon my good health, as well as my private rights, to have to indulge in secondhand smoke in vast quantities. There's a great deal of sincere thinking on the part of nonsmokers to be able to—or try to protect themselves from this curse, let us say.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman. I think this is also a step toward clean politics. This would eliminate the smoke-filled room.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: I don't want to dwell on this too much, but maybe some of you noticed that I was voting with Cate all the way on this pollution thing. Well, if you had to sit beside all these guys around here—old Berg smoking rat root, Conover smoking something called "down on the farm" (Laughter)—and if you could see the mess around this desk, you'll know why I'm voting for pollution—or against it. (Laughter)

CHAIRMAN GRAYBILL: Mr. Schiltz was next.

DELEGATE SCHILTZ: Mr. Chairman. I'm really just stalling for time so I can get this last one in. (Laughter)

CHAIRMAN GRAYBILL: Mr. McCarvel.

DELEGATE McCARVEL: I rise to support Mrs. Bates in this venture, because I understand the Legislature here a couple of sessions ago were thinking of removing that painting back there because the smoke in the room was getting too thick and it was going to ruin the painting. Then they even thought of glassing it in and making it air-conditioned. So, maybe she has something—some merit to her proposal.

CHAIRMAN GRAYBILL: Mr. Drum, would you like to join the argument?

DELEGATE DRUM: Mr. Chairman. I rise in support of the smokers. It seems to me—it appears that those who smoke most, talk less. (Laughter) So, I think in deference to those of us who are subject to all kinds of pollution, I think we should give that some consideration.

CHAIRMAN GRAYBILL: Mr. Drum, are you a smoker?

DELEGATE DRUM: I don't inhale. (Laughter)

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. I know that Mrs. Bates' motion is not facetious in any sense, but I want to remind you all of the famous English writer's statement that a woman is only a woman, but a good cigar is a smoke. (Laughter)

CHAIRMAN GRAYBILL: Mrs. Bates, I'm going to allow you to close, but Mrs. Blend, would you like to—

DELEGATE BLEND: Naturally, I rise in opposition. And I would like to point out that if you pass this motion, that you will have to find some other way of promoting the building programs on the campuses of the University of Montana.

CHAIRMAN GRAYBILL: Mrs. Bates, would you like to close?

DELEGATE BATES: Mr. Chairman. In all due respects to this, this is a statutory measure. And I do think that maybe, in the future, the Legislature may provide such a provision. I have a little more trust in the Legislature, and therefore I do not want to put statutory measure in this Constitution—and—or to try to prevent as much statutory measure—therefore I would like to withdraw my motion.

CHAIRMAN GRAYBILL: Do you want a roll call on your withdrawal, Mrs. Bates? All right. Mrs. Bates' amendment is withdrawn. Mr. Murray, since I have no more amendments to Section 1, would you again move the adoption of Section 1?

DELEGATE MURRAY: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 1, subsections 1, 2 and 3, of Proposal Number 6, recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered. Mr. Clerk, will you read Section 2—or the first—no—all of Section 2 please.

CLERK HANSON: "Section 2. Reclamation. All lands disturbed by the taking of natural resources must be reclaimed to as good a condition or use as prior to the disturbance. The condition or use to which the land is to be reclaimed and the method of enforcement of the reclamation must be established by the Legislature." Mr. Chairman, Section 2.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 2 of Proposal Number 6, it recommend the same be adopted.

CHAIRMAN GRAYBILL: Does anyone wish to speak for Section 2 before Mr. Delaney makes his amendment?

Mrs. Cross.

DELEGATE CROSS: Mr. Chairman. I'd like to make a statement on Section 2. This section on land reclamation deals with another element of life, and that is the land itself. Again, I reiterate as I did yesterday and a number of times before, that Montana has reached a point of decision. Do we or do we not act to protect our land so that it isn't destroyed for a thousand years to come? On my desk, and you can all see it here, is a file of clippings relating to strip mining. Ninety-five percent of them deal with strip mining in Montana and the activities of strip-mining companies in this state. They go back to the year 1968, about the time that strip mining was being revived in Montana. This method of coal mining was negligible in that year. Now, we have coal trains going out of this state at the rate of three a day. There are at least 100 cars in each train, and each of these trains contain 10,000 tons of coal. I know that this is so, because I have watched them go through Glendive and I've also taken the time to count them. At night, I can tell when a coal trains goes by because of the sound of the rails. The weight is so heavy there is a zing to them. And you can tell these trains are going through just by listening. Anybody who lives three blocks away from that train can also feel the reverberations which have been, at times, equivalent to the earthquake tremors that have happened in Helena, and the shades on the windows shake. In this file which I have before me are two studies which have been made by the United States Department of the Interior. This one is called *Surface Mining and Our Environment* and was printed in 1967. This one is called *The Study of Strip and Surface Mining in Appalachia*, and that was printed in 1965. If you were to look at these, you would find them of intense interest, because this is what Montana is going to look like if the strip miners have their way. These studies were made at a time when the poverty in Appalachia was so intense that they decided to find out why. It was also at a time when a great deal of federal money was being poured into Appalachia to counteract this poverty, and they found that no matter how much money they poured into that section, it didn't do very much good. The process of strip mining, which was supposed to be such a great economic boon, happened to turn out to be an economic bust in Appalachia, and Appalachia includes the State of West Virginia, which we've heard so much about in the last few days. The geography in Montana is admittedly different, but without land reclamation, the results can be just as disastrous. When we get to debating this article on reclamation, I hope that you will consider it seriously. I'd like to remind you, too, that when we get to the article on water and agriculture, you are already going to hear what you know, and that is that agriculture is Montana's number one industry and that it leads our economy by a wide margin, with number two and number three, mining and tourism, a good way down the economic ladder. And, lest you have forgotten in these carpeted and marble halls what good topsoil looks like and what it feels like, here is a jar for you to come and look at. Now, I wish that I could tell you that I had sent back to eastern Montana for approximately five inches of good topsoil to let you know what our farming land looks like, but I can't lie to you. I went out this morning and I picked it up under one of the trees at the place that I stay. And because I have so much respect for the soil, I'm going to go and put it back when I'm through here this morning. Also, I would like to remind you that it takes nature 1,000 years to produce one inch of topsoil. Earth gets its price for what earth gives us. And believe me, you destroy the land and we topple our number one industry. It's as simple as that. Now, I don't know how many of you have actually seen the spoilbanks in the strip-mining areas. As feats of engineering, they are awesome indeed. And if you're lucky enough to get past the areas where the tours are conducted and where some experiments in the revegetation of the area goes, you'll come back with a feeling of complete desolation. Those spoilbanks are as lifeless as the moon. I know that there are some efforts being made to restore these areas, and I commend those companies for making the attempt. This is long overdue, but their efforts are infinitesimal in comparison to the amount of land disrupted. By the estimates of the United States Bureau of Mines, it has been stated that 10,276 square miles of land will be disrupted by this method in the United States, and that is an area twice the size of Connecticut. If you do not do something about land reclamation, you might as well forget about the sections on water and water rights and the section on the Department of Agriculture because, believe me, you won't need either one. Now, I'm very serious about this. I am not a newcomer to this; I've been studying it for a long time. When I first began studying, it was because I was interested in the possibilities of coal development. As the years went by, I became alarmed. And I think if we really mean what we say, we're going to do something in this Constitution to protect what's so important to Montana, and that is the land itself.

CHAIRMAN GRAYBILL: Mr. Delaney, do you want to be next?
All right. Mr. Driscoll.

DELEGATE DRISCOLL: Mr. Chairman. May I ask Mrs. Cross a question, please?

CHAIRMAN GRAYBILL: Mrs. Cross.

DELEGATE CROSS: Yes.

DELEGATE DRISCOLL: Mrs. Cross, what would be the effect of your Section 2 on the mining operations in Silver Bow County?

DELEGATE CROSS: You know, I was hoping somebody was going to ask me that. Personally, I don't think that the Berkeley pit is going to be affected. It has been there for decades, and I presume it's going to be there for a few decades longer. They have, by their very position in time, probably the prerogative to continue its operation, and I would be the last one to say they shouldn't. It is part of the life system of a large city in our state. Man happens to be a very adaptable creature, and the people of Butte have adapted themselves to the Berkeley pit. If the time ever comes when this pit will no longer be used, I predict that it will become one of the most interesting, historical sights in the State of Montana, geologically as well as depicting the history of the mining industry. And I don't think that's incompatible with what we have in mind. I understand that water has to be pumped out of that pit in its present operation. Well, let's carry the step a little bit further. Let's let it fill up, if the time ever comes when we no longer need it to mine copper, and then Butte can boast of having one of the in-earth lakes of the state. I suspect it would be quite a prize to be able to have a home on the lakeshore. (Laughter) Further, I would like to say that, no matter when and what happens as far as the pit is concerned, if the time ever comes when it is no longer useful to the company, that company will leave and any people who are left will have to readjust themselves to the absence and we, as a state, will pay for whatever conversion may happen.

CHAIRMAN GRAYBILL: Mr. Driscoll.

DELEGATE DRISCOLL: Mr. Chairman. I'd like to thank Mrs. Cross, but I'd like to ask Mr. Dahood a question.

CHAIRMAN GRAYBILL: Mr. Dahood, will you yield?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE DRISCOLL: Mr. Dahood, what is your opinion of Section 2 on reclamation and the effects on the mining industry in Butte?

DELEGATE DAHOOD: Well, Mr. Driscoll, I'd like to answer it this way. I think there certainly is a need for a Section 2, but I think the manner in which it is worded could have a very disastrous effect upon the operation in Butte. Although I want to say this—that I agree with Delegate Cross that the intention behind it is certainly good for the State of Montana, but something should be done to protect the industry that we have in our immediate area.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: I, too, agree with Mrs. Cross that mining companies should have to do something about the land they disturb. Coal mining—and I'm not that much an expert on mines just because I live by them—but coal mining—strip mining—is a good deal different than a pit operation. If I understand coal strip mining, the surface is disturbed the same as pit mining, but they don't go into a deep operation. That is, they strip off the coal, which might be 20, 30 feet in depth. And then, the idea behind these reclamation projects, as I understand it, is to put topsoil back where it was and replant the area. Now, with the pit, I just have no conception of how that would be reclaimed. Mrs. Cross' statement that they make a lake out of it—probably there is going to be water in it someday when it is finally abandoned. But all of that—all of the ground that has been taken out there just isn't in the immediate area. A good deal of it has been hauled down to Anaconda and processed in the mining industry. To fill in the pit, you'd have to disturb other topsoil. There is just no practical way that this could be done that I can see. Maybe Mrs. Cross has some solution to it, but it certainly isn't in a natural development for a lake. The water would be mine wastewater, which would be very corrosive. It certainly couldn't be termed a lake. It would be the worst type of a water. As it accumulates in there, it would be highly mineral in nature. The copper water that they take out of the mines, that I'm sure Mrs. Cross is talking about, is of such a nature that they dissolve iron into it just by leaving it there. I just don't know; I realize that Mrs. Cross doesn't intend that the mining operation will be disturbed, but that's not the way the section reads. The section reads, "All lands disturbed by the taking of natural resources must be reclaimed to so good a condition or use as prior to the disturbance." Now, you certainly can't say that the Butte mining operation in the pit doesn't disturb the earth. That's particularly what it does. And in all practicality, there's no way that the Anaconda Company or any other mining company can ever reclaim that. When they get finished with the thing, presumptively the Anaconda Company won't be there any more, and who's going to enforce it? And I just don't—there's no practical sense that we start passing a constitutional provision that Mrs. Cross—As I understood her excellent speech, she said, "Well, I can't tell you what to do about Butte", but yet this applies to Butte. And I just don't see how we can pass it and realistically expect that it's going to be enforced. There's nothing in here which says that—all lands disturbed in the future", it applies retrospectively. And there's just no practicality to it, that I can see, in applying it to the operation of the pit in Butte.

CHAIRMAN GRAYBILL: Mr. Delaney, are you going to—All right, whenever you're ready, I want to make your motion; but if you're not going to stand, I'll give it to somebody else.

DELEGATE DELANEY: I would like to have it read.

CHAIRMAN GRAYBILL: Very well. Mr. Delaney has—what do you want this to be, an amendment or a substitute motion?

DELEGATE DELANEY: Substitute motion.

CHAIRMAN GRAYBILL: Substitute motion. Very well. Will you read this as a substitute motion.

CLERK HANSON: "Mr. Chairman. I move, as a substitute motion, on Section 2, page 3, lines 19 through 24 of the Natural Resources and Agriculture Committee proposal, by deleting it in its entirety. Signed: Delaney."

CHAIRMAN GRAYBILL: Very well. Mr. Delaney has made, as a substitute motion, the deletion of Section 2 in its entirety. So, the motion—the argument—the discussion is on Mr. Delaney's motion to delete in its entirety Section 2.

Mr. Delaney.

DELEGATE DELANEY: I believe that this reclamation is covered entirely or satisfactorily in subsection 3 of Section 1: "unreasonable depletion of natural resources." I believe this covers the reclamation and leaves it to the Legislature, where they can put some sense into the restoration as it would apply to each particular instance. Section 2 on reclamation does not just state "strip mining". It states "any land that is disturbed", and I definitely read it that it means a small gravel pit that I might have on my ranch that I get a load of gravel out of to patch a mudhole in my road. I read it to include the Berkeley Pit. To my mind, possibly they could fill that Berkeley Pit with water and maybe test submarines in it or something.

CHAIRMAN GRAYBILL: Mr. Roeder.

DELEGATE ROEDER: Mr. Chairman. I rise in opposition to Mr. Delaney and, in principle, support Mrs. Cross. I hadn't read the reports she referred to. Maybe I don't have to, because I grew up in Appalachia. I don't often think about material goods in this life, but there's one time I wished I were wealthy. And that's when the Legislature meets and when I knew this body was going to meet, because I'd like to have the money to take you all back and show you communities that would make Butte look like a garden spot.

CHAIRMAN GRAYBILL: Mr. Joyce is next.

DELEGATE JOYCE: Mr. Chairman and fellow delegates. I rise in support of Mr. Delaney's motion to delete, for this reason. It illustrates, at any rate, where—the philosophy of Mrs. Cross, as she puts forth so eloquently in the editorial that she wrote as the Committee Chairman and which the Chairman incorporated into his speech to this Convention, and at the same time, he also incorporated into his speech the philosophy that I came to this Convention with. And my philosophy is this: that this body is not a legislature, notwithstanding that a good many of the delegates think that it is. It seems to me that what this Constitutional Convention should do is to write a constitution that will structure the government, that will allow the people of Montana to meet the problems that arise in the future, and that we are not met here to solve any current problems and to impose our will or our pet ideas on generations yet unborn. Let the people of Montana solve their problems in the future. And I think we've made a giant stride in that connection by enlarging the ability of the Legislature—who, after all, do represent the people—to meet the problems as they arise. If you say, "Well, the Legislature won't do it", as we've heard a hundred times here, I submit to you that when the Legislature won't do it, it's because the people of Montana don't want it done. And I submit, if you think the Legislature is controlled and is corrupt, then the place to fight these battles is in the public forum, to run for office, to get elected, to come up to the Legislature and put your ideas into force. But it seems to me that it is the height of foolishness to write into a constitution that all lands must be reclaimed. Now, lands should be reclaimed, but it ought to be worked out on a balancing of the various interests as times change. The Legislature should be able to enact laws to require reasonable reclamation of the land. And if they pass a law in one session that is too restrictive—that actually doesn't work out in practice—then the next session, it can be changed. And so on through history, the people of Montana can balance the various economic interests; the interests of whether or not it's better to mine or whether or not it's better to prohibit mining in some other interest. But it's—to write into the Constitution a provision that imposes for all time the ideas of the people in this Convention seems to me to be an improper way to draw a constitution. We have a Legislature. We have freed the Legislature to act more responsibly and effectively for the people. Let us leave all the solution to all the problems to the future, to be worked out by reasonable men.

CHAIRMAN GRAYBILL: Mr. Ask.

DELEGATE ASK: Mr. Chairman and fellow delegates. I rise in support of Delegate Delaney's motion to delete this section. And first, I'd like to say that I'm glad the smokers are catching hob this morning rather than the lawyers. Maybe we can keep that going all day here. I am very concerned about this section, and I don't say this because I'm against reclamation. I feel the way this section is worded, that is going to stop the removal of a lot of natural resources in the State of Montana. And it says "natural resources"; it just doesn't say "mining". Natural resources would cover timber; it would cover a lot of agricultural activity; it would cover hard-rock mining and strip mining. And I submit that's very broad. I think all of us feel that we have to have good reclamation laws, but we also have to remove our natural resources. We cannot get along without coal. They say our gas and oil supply is being depleted; it'll be practically gone in a few years. We're going to have to rely on coal. We need our other ores or we'll be unable to live. I submit that with this section, this would stop a lot of mining and a lot of natural resource work in Montana, such as timbering. And when this stops, the employees have to leave. What are we going to have in Montana? Are we going to have a playground here? Are we going to live on the east or west coast and come back here in the summer to play? I submit that we have to be realistic about this. Now, if you'll read that first section, it says, "the taking of natural resources—of all lands disturbed by the taking of natural resources must be reclaimed to as good a condition or use as prior to the disturbance." To me, that means that there are certain areas that probably could meet these requirements, but I submit there are a lot of areas that could not. The only way I can get this example across is use an example from my own home area. As you know, Roundup and Musselshell County has a lot of good-quality coal. It's probably a better quality coal than much of the areas of eastern Montana. And it's been mining—a coal mining town for—that's why it was started there in 1908. Milwaukee Railroad went through; the first big mine was opened for the railroad. Now, the two big mines closed 8 or 10 years ago because of—the costs of underground mining became prohibitive and they couldn't compete in the open market for the price of the coal, so they just closed. But there were four, five or six small family or partnership mines that kept running. They still sell a lot of coal in eastern Montana and some in western, clear into the Dakotas, for home use, for heat. It's a good-quality coal, and the sulphur content is very low, and—the emissions—it meets all the emission standards of even eastern states, if you burn this coal. So, it's a good-quality coal. Now, we had four or five of these small mines operating, and about two years ago, the federal [government] passed the Mines Safety Act. And incidentally, these mines were—had a very good safety record, but under the new safety record act—the requirements of that—these small mines could not meet the requirements to redo their underground tunnelings to meet these standards, and they're starting to close. They are—some of them have already closed. There's one or two of them that are running this winter, but they are being subject to fines. And they'll have to pay their fines, but they'll—when they get to the end of—they have customers to service, and they're going to close. Now, one of the partnership mines employed 8 or 10 men—felt that there was a need, and the people were after them to continue to mine coal. Well, they can't go underground. They just don't—you can't afford it. So, they had an area there where they could—right close to where their mine was located—to strip. So, they went into this—and, incidentally, we have very good reclamation laws, that were passed by the last Legislature, on the books; maybe they're not the best; maybe we can improve them—but under these new laws, they had to go to the state here for a permit for strip mining. They spent half the summer—the managers—meeting all the requirements of the state. As to—They have to submit a plan and a bond—this is how we're going to do our strip. The engineer has to draw what it's going to look like when they're mining and when they get done. And this is submitted to the Land Board for their approval. And I think two or three plans were submitted till they finally got one that was approved. And the tremendous cost, when this coal is 40, 50 feet under the ground—this is the closest we have in our area—tremendous cost to move that top dirt and to get to where you can start mining one acre of coal; and they feel that two or three acres of coal a year is all they will need; it's five feet thick. So, they've done all this and they couldn't afford to buy the machinery, so they contracted out the removal of the dirt. They had to go into hock clear up to their necks to get enough money to—for the contractor to remove this topsoil where they get down to mining. All right, they reached there and they started mining, and everything's working out fairly good. It's a real costly process, but they think they're gradually getting it to the point it'll be the same cost as it was underground, so the price of coal won't go up, so they can meet the needs of all their customers. Well, you know our Citizens' Corps. We sent all these proposals to them, and one of the Citizens' Corps in Roundup gave this natural resources one on reclamation to these mines there just to see what they thought of it. Well, I got phone calls when I was home over the weekend, and they had read this provision and they feel that they are meeting the reclamation standards—or this one mine—of the state at the present time. But they feel with this provision in there, that they would have to stop; they couldn't meet these requirements. Now, they've spent a lot of money and they're mining the coal for the sale to their customers as the coal is needed. And the other mine that's going to—one of the other mines that's going to close were ready to start this project. They can also strip mine close to—adjacent to their mine. And if—they feel if this particular provision is in the Constitution, they feel that they won't even attempt it. And I think we're closing down a little industry in our area because of one section in our Constitution. Now, this is—we can say, "Well, what's 40, 50 men's jobs, or a small business? What difference does that make? Let them go work somewhere else." Well, that's not the idea. Number one, we're losing the business; but number two, we're losing our natural resource. We need this coal. And, of course, this thing is going to apply to the big operators also. But I don't think we want to close down—we need this coal and we're going to need it in the future. But let's pass good reclamation laws that they can meet. The reclamation standards on these pits are—so far, they've been three-to-one pitch and they're going to plant grass and trees again. But no one knows whether they'll be exactly to the same condition. They're also working with the State Agricultural Department at Bozeman to find grasses and other conservation methods to restore these pits. And I think they're working real hard on it, and I think they're going to accomplish the same purpose with our reclamation laws, rather than have something in the Constitution that's going to close down all mining. And Mr. Kamhoot, I think, lives in an area where the land is a little flatter. Maybe they could meet these standards, but we just don't know. I don't think we can put anything in here that's going to close down mining. And I think this covers timbering and, like I said, agriculture. If we want a playground in Montana, that's what we're going to get. But I think if we leave it to the Legislature, let them pass reasonable reclamation laws, we're going to get where we want to go without closing everyone down. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. I move that, as a substitute to the motion now before the Convention, that in line 21, page 8, the line—the words after "as", "prior to the disturbance period", be deleted and in lieu thereof be substituted the words "is possible". So that the line would read, "condition or use [as] is possible period, The condition". And then the language resumes.

CHAIRMAN GRAYBILL: All right. Now, Mr. Romney, the difficulty is that we have a substitute motion to delete, and so you're again amending a motion to delete. So I will make a note of your motion and allow your motion after we've disposed, one way or the other, of the motion to delete.

DELEGATE ROMNEY: May I speak?

CHAIRMAN GRAYBILL: You may speak, but not on this motion at this time, unless you're going to speak on the motion to delete. Yes, you may speak.

DELEGATE ROMNEY: Well, I can—the subject is quite general.

CHAIRMAN GRAYBILL: Well, all right. My point is that if we can dispose of whether we're going to delete it or not, then we can amend it or we can come in with other amendments. I happen to have on my desk before me other people's amendments, in the event Mr. Delaney either wins or loses, and I'll be glad to put you in the line. The point is that you can't amend a motion to delete by adding in some more words. But go ahead.

DELEGATE ROMNEY: Therefore, I'll direct my remarks to Mr. Delaney's motion, with mine held in limbo.

CHAIRMAN GRAYBILL: Right.

DELEGATE ROMNEY: I think, as Delegate Joyce indicated in his remarks, that this matter is distinctly statutory in nature and should be handled by the Legislature. Indeed, it has been handled by the Legislature for a number of years; and indeed, it has been handled by the Legislature very inadequately, in my opinion. However, I think that is a natural field for it. There are people who say that is where it should be entirely, but I do not concur in that view. I think that the Constitution should have some phraseology such as is contained in Section 2, as I hope to amend it, so that there would be a backstop for legislation concerning the matter that we have under discussion. The reason that I feel this way is that, for a long time, I've been viewing this coal disturbance over in eastern Montana. I've been over there and looked at it. I introduced and worked for legislation in the Legislature. We currently have a tax on coal, which is partially used for reclamation of the lands that are molested by the industry which is removing the coal. Now, I think it's a splendid thing to have an industry there removing the coal and providing the low sulphur content coal which is used by the electrical energy industry, in large part, in generating electricity to be used by the American people. Unfortunately, to a large extent, this coal is being taken out and transported from—out-of-state in these trains that Mrs. Cross referred to—in huge trains and carrying millions of tons to Minnesota, Illinois and other places, where the generating industry turns the coal into electricity. It was my view, in trying to raise taxes on this, that this resource is a natural resource which, once removed from the earth in Montana, becomes lost to us forever. There are those who say that it provides a lot of employment and money, but the trouble is the employment is very meager and the money that is realized by the state is almost nonexistent. I think that the coal should be more highly taxed; and, consequently, the state could then receive considerable money from it for our treasury; and we need that. I would rather that the coal slumber under earth forever than have that natural resource taken from the earth and transport it out of the state for use in Minnesota and Illinois and other places and the state not realize anything from it. Remarks have been made by Delegate Ask and, I believe, Mrs. Cross about the efforts to reclaim. The reclamation, as Delegate Ask explained, was rather—it's in an experimental stage. Whether or not the grass and trees will grow upon this—these restored areas is a matter that we do not know now, but there are being efforts made to take care of it. The trouble is that the money realized from the present tax may not be enough, although experts on the matter seem to concur that it will be adequate. So that is something that the experiments have got to develop. But I feel that we should leave it to the Legislature to determine just what the tax is going to be and—how that tax—what portion of that tax is going to be used for reclamation. But we ought to have something in the Constitution as a backstop for this tax legislation, which is really reclamation legislation. Now, it is not only the coal, as Delegate Ask said, that is involved in this; there are other things. For example, there is the timber in western Montana. Now, I come from an area which was heavily timbered. It has been cut for years, and it has recently come to the attention of the public that it has been overcut. This is—those of us who have been crying about this in the wilderness for a long time were considered oddballs for a long time, but now there is a general realization that the timber has been overcut, that the selective cutting process has been overdone, and clearcutting has taken a heavy toll, much heavier than the natural resource can sustain. The immense tracts, sometimes as high as a thousand acres, are sheared off just like you would run a lawnmower over your lawn until all the grass has been taken off. Trees 50 and 75—25 years, of good size, which one day might make a mature, merchantable piece of timber, have been removed in the clearcutting, along with the mature timber, which they can use for turning into lumber. There are many of us who decried this method and desired that the multiple-use, sustained-yield, selective cutting method be used. This has finally become so apparent that the Forest Service has restricted sales of timber in order that it be handled this way. They also—if you go into these areas, you'll find that many of them are absolutely deserts, as far as use is concerned. Too, the Forest Service is engaged in a replanting program, but that is not keeping step with the cutting program. And as a consequence, we are falling behind. There—here is another place where reclamation must be taken care of. The trouble is most of it is on federal lands and it's difficult to reach through legislation. The point is, if we have a backstop for reclamation in the Constitution and people are aware of this situation, we are making some strides in the right direction. While I think that the verbiage in the Section 2 is inadequate as I would amend it, if I have an opportunity, I think it is too stringent as it is now, before the Delaney motion. For example, "must be reclaimed to as good a condition or use as prior to the disturbance". Now, all you have to do to realize that this is an impossible situation is to go and gaze into the Berkeley Pit, is to go and look over some of these devastated areas in our forests where clearcutting has exacted its toll. All you have to do is go into the area up in eastern Montana where the Knife River Company has been extracting coal through the open—through the strip-mining process, or down in Rosebud County, where the Western Energy Company has been doing the same thing. There's—you can't get it back to the same condition it was before, and there's no use placing idle verbiage in the Constitution saying that we will. But there is a use in placing verbiage in the Constitution which expresses the necessity of trying to reclaim it to as good a condition as is possible. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Anderson.

DELEGATE JOHN ANDERSON: Mr. Chairman, members of the assembly. I speak on this somewhat reluctantly. I have a lot of—am very sympathetic with Louise Cross' remarks in regard to this, and I'm sure that we must have something in regard to reclamation as one of the most—one of the more important things, as far as the future of our state. I will have to hold with Mr. Delaney in regard to this deleting it. I like to be consistent. I've upheld in committee that this is purely a statutory matter, and I feel that as far as the Constitution is concerned, as Mr. Delaney has pointed out, that the Section 1 and Section 3 of the article that was adopted yesterday, I believe, takes care of it as far as the Constitution is concerned. And when it comes to reclamation, I think it has to be set up statutorily because it covers such a wide area. For instance, I'd like to call to your attention that mining is not the only thing that is disturbing our land. I'd like to point out that—the figures that I have here that—to date, that mining has disturbed approximately 29,000 acres of land in the State of Montana, whereas the interstate system of roads has disturbed 40,000 acres already. So, I merely point this out—that it would be impossible, as I see, to put anything in regard to reclamation, except to direct the Legislature to do something in this direction. And I feel that the Legislature has already made a real fine start in the last session of the Legislature as it has in many things in regard to our environment. I note that they have passed legislation in regard to strip mining and they also have passed an act requiring the license of persons engaged in strip mining, which Mr. Ask called to your attention, too. So I will have to support Mr. Delaney's motion to delete. Thank you.

CHAIRMAN GRAYBILL: Mr. Lorello was next.

DELEGATE LORELLO: Mr. Chairman, would Mrs. Cross yield to a question?

CHAIRMAN GRAYBILL: Mrs. Cross?

DELEGATE CROSS: Yes.

DELEGATE LORELLO: Mrs. Cross, I attended the Romney hearings plus some of the other public hearings that you had, and I heard statements in there that reclamation and the environment and the lunch bucket are compatible. Would you comment on that, please?

DELEGATE CROSS: Yes, I'd be happy to. And these will also be comments which will be directed to what Delegate Ask also made. First, I would like to say that this is—I don't consider this a pet idea. I think every one of us in this room are affected by it, either presently or will be. Secondly, I don't think that requiring reclamation of land is going to stop anything. I think it will just require some responsibility on the people—on the part of the people who undertake it. Secondly, I would—to tell you that if the cost of doing any other type of mining is so great, then perhaps we should wait until we can come up with a method that is less costly, both in taking out the natural resources and restoring the land; because in the long run, Montana won't lose a thing. The natural resource will still be there. Instead of passing on the bill for reclamation to a future generation, we'll be able to pay some of the costs ourselves. The next comment I'd like to make is—perhaps you're not aware of it, but there is quite a strong movement in the United States to prohibit this type of mining altogether. And unless something feasible can be done to make the destruction less obvious, I predict that this will happen. If you'll recall, yesterday I mentioned the fact that no permits were issued in West Virginia after this breaking of the dam for more strip mining. This doesn't mean that the previous damage will be obliterated. The people of that state are going to have to face it and probably pay for it. Economically, you might be interested in knowing that this strip mining is done by extremely large, efficient machines. The men that run those machines are highly skilled and highly trained, and I don't think that there are very many employed for the mining that is done. That means not very many Montanans get the job. The big amount of money is made at the point of delivery where the coal is taken and used, and we are not delivering that coal to Montanans; it's going out of state. It's going to the west coast. It's going to Minnesota. It's going to the ports in Chicago. I also understand that from there, it is taken overseas. Now, if that provides jobs for Montanans, I'd like to know how.

DELEGATE LORELLO: Thank you, Mrs. Cross. I would like to remind Mrs. Cross and some of the others that in some areas, we can live with some smoke and some dust and, yes, even with some large holes like the Berkeley pit, and we can't survive without them. Thank you.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman. I have here before me, on my desk, the report from this committee. It is signed by every person on that committee. There is no minority report attached with it. I have heard from Mr. Delaney, who signed the report, who moves now to delete it—Mr. Anderson. I would like to ask if Mr. Brazier would yield to a question.

CHAIRMAN GRAYBILL: Mr. Brazier?

DELEGATE BRAZIER: Yes.

DELEGATE HARPER: As a committee member, Mr. Brazier, would you answer Yes or No? Do you support this majority proposal?

DELEGATE BRAZIER: I'm glad you asked that question, Mr. Harper, because I was going to clarify the record. I support Mr. Delaney's position, and I would call to your attention a misprint in the report. You will notice under proposal number 2, on the total it says 6 Ayes and 3 Nays. But when it starts specifying who was an Aye and who was a Nay, it makes a mistake. I was a Nay.

DELEGATE HARPER: You do not support it. Thank you. Mr. Siderius, would he yield to a question?

DELEGATE SIDERIUS: Yes.

DELEGATE HARPER: Mr. Siderius, do you support the majority proposal?

DELEGATE SIDERIUS: I do.

DELEGATE HARPER: Thank you. Mr. Kamhoot would yield to a question?

CHAIRMAN GRAYBILL: Mr. Kamhoot, will you yield?

DELEGATE KAMHOOT: Yes, I'll yield.

DELEGATE HARPER: Mr. Kamhoot, do you support this majority proposal being offered to us?

DELEGATE KAMHOOT: My name is on the majority proposal. We need some type, I think—something down the road—of guidelines that are a little more than laws made by men, as we go from year to year. But this section we're talking about is entirely too broad. We can just not apply the same practice to reclaiming coal land as we can to reclaiming hard-rock mining. And I just don't like the section. I was never well satisfied with it, but we definitely should do something to indicate the consensus of this body that we don't want to destroy 500,000 acres of Montana land for the purpose of delivering natural resources, which we should deliver. The people of the United States are entitled to a little better life by having electricity and appliances and things that are the product of this, but not at the expense of completely destroying Montana. So, therefore, I signed the report; but I'm not satisfied with that one section. And I hope we can get on here and see some more versions of it, and maybe there will be something that I can support.

DELEGATE HARPER: Thank you. Mr. Gysler, would you yield to the same question? Do you support it?

DELEGATE GYSLER: Yes, I yield. I feel that those of us who voted for this language in our committee had a couple of things in mind. Number one, we had a feeling that if our Environmental Article went through in good shape, probably this would not be necessary and maybe we could delete it. However, if it didn't go through with the wording we had, particularly in subsection 3, then we very definitely had to have something. I wanted to amend this article in committee to make it possible for my friend, Henry Siderius, to keep his gravel pit on the farm, but I couldn't figure out the wording, and so on. If you will recall—or, I don't know if you were at the meeting that Charles Lindbergh had with the delegates the evening before he spoke to us here. This article was read to him, and he said, "I think you've gone too far". And basically, this is my stand. I think probably we ended up with something that we can't live with. I'm for a reclamation article, but I kind of doubt that we can live with that one.

DELEGATE HARPER: You're not for this. Thank you. Mr. McNeil, would you yield to a question? Do you favor this majority proposal?

DELEGATE McNEIL: I wrote it and I support it, although I recognize it's probably too strong.

DELEGATE HARPER: Mr. Rebal. Mr. Rebal? He's not here.

CHAIRMAN GRAYBILL: Not here.

DELEGATE HARPER: Mr. Rebal, would you just nod Yes or No whether you will vote for—whether you support this majority proposal which you signed?

CHAIRMAN GRAYBILL: Mr. Rebal is getting a little ammunition for you.

DELEGATE REBAL: Thank you. I think I'm going to support the majority like the majority is going now. (Laughter)

DELEGATE HARPER: Thank you. That's a good answer. Mr. Chairman, I really am concerned. All day long yesterday, we heard this same committee stand and support each other and say "leave it to the majority". We worked long and hard, and not even one word should be changed. You would never realize that for every hour we spent here talking, the committee has spent days perfecting this language. Everything is important. We must leave it exactly as it is. I submit to you that this committee did not act in good faith with this group. We now have before us a proposal which only two people out of the entire committee have unqualifiedly said that they support, and yet, we have no minority proposal here. Now, I don't know what committee acts are supposed to mean in this conference, if it isn't supposed to be an act of good faith on the part of the committee that brings it in. Now, if the Constitution doesn't state principles, what's it supposed to do? If land and water aren't basic issues that we ought to deal with in the State of Montana, I don't know what we ought to deal with. And if the people of Montana didn't send us here to protect their basic rights, what did they want us to do? As a citizen—and ever since we moved to Montana years ago, I heard that this was the issue—the State versus the Company. I never thought I'd be part of a group where we came right up against it, as apparently we are right now. I hope we will leave this as some kind of a properly worded article in here on reclamation, because I am certain that they will say exactly the same thing on water rights. If we shouldn't say anything about land, we probably shouldn't mention anything about water.

CHAIRMAN GRAYBILL: Mr. McDonough was up next.

DELEGATE McDONOUGH: Mr. President. I really think we should consider in this article as to who actually owns the coal in place in eastern Montana. Most of the coal over there is owned by the Northern Pacific Railway Company and the federal government. The railroad preserved quite a bit of it, especially in the south, along their right-of-way. Even under the old reservation before 1913, they reserved coal and iron. After 1913, they reserved other metals and coal. The federal government, starting in patents issued after 1905, reserved the coal. I just venture a guess that at least 70, 80 percent of the coal in place is owned—in the southeastern part of Montana is either owned by the railroad company or the federal government. Now, what do these reservations say when the railroad conveyed it out, or the government patented it out? And I think this is quite important to Mrs. Cross' motion. The railroad reservations say that they will only pay you for the surface so used. So if they take a hundred acres out of your ranch, or 640 acres, they're going to pay you the market value of that surface which they used. They don't pay the depreciation to the rest of the ranch for digging this coal, and you get no royalty relative to the coal. Now, the federal government in the Stock Grazing Homestead Act of about 1917 says essentially the same. The clear reservations made by the government under the acts of 1905 and 1906 say nothing about payment for the surface. They do, however, say payment for the improvements. So, actually, I think the people in Montana actually have a very valid interest in putting this in their Constitution, that the land will be restored to the condition provided in Section 3, because that might be the only thing they can get out of this land. They possibly could get no royalty. They could get some damage payment for the land actually taken, and the individual cannot get any damage payment for the damage to the balance of his property. And I think we all should support this Section 2 for that reason. In addition, one acre of coal—one acre of ground with a 27-foot vein will produce, if my calculation is correct, about 45,000 square yards of coal. The selling price for coal is about $2 a ton. They have costs in producing this, certainly, but the cost of reclamation, even at a thousand dollars an acre, would be very small compared to the eventual loss of Montana for the loss of all this acreage for any taxable use we could make. In addition, most coal leases, if they are owned by private individuals, have a royalty payment of 5, 10 and 15 cents a ton. And, as you know—we all know, inflation; and most coal contracts have an open end on the thing that they can renegotiate the price for coal. But most royalty contracts don't. So, if you sign up for 15 cents a ton now, in 30 years, the 15 cents may only be worth the same as 5. So, there's no question about it; the coal companies can put in their price the proper reclamation of the surface of the land when they're digging it up. Thank you.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Mr. President. Reclamation of land is needed, but the laws regarding the reclamation should be carefully thought out before writing them. Construction industry could be adversely affected if these laws were enforced strictly as this article has them written. Many gravel pits are needed for road construction. It's nearly impossible to restore them into their—to their original condition. But the Highway Department has, for a long time, been aware of this, and their environment problems are being solved and have been solved for the last few years. They do require sloping and shaping and beautification of these pits, but they cannot restore them into the same condition as this article requires. Many pits are now made into very nice camping areas. The deepest part of the pits are made into fishing and swimming pools in many places, with the help of the Game and Fish Commission. Quarrying in some areas requires the taking of thousands of yards of hard rock, usually from ledges. Naturally, these ledges are being pushed back, but the shape of the quarry is practically the same as when you started. But you cannot restore it to its original condition, because of the taking of the rock from its original place. The face of the ledge could not possibly be put in "as good condition", to quote, as the article requires. But it is required to be left in a safe and not unsightly condition under the conditions we're working today. Many acres of strip-mining ground can easily be sloped or shaped into better condition, as far as the use is concerned, than the rough areas are now. I believe that this article should be deleted and left to—the matter left to the Legislature.

CHAIRMAN GRAYBILL: Mr. Blaylock was up before, Mr. Kamhoot.

DELEGATE BLAYLOCK: Mr. President, I resist this motion to delete. I have a great deal of sympathy for the viewpoints put forth by Delegate Ask, as far as working people are concerned making a living. But I don't think that we have to delete this whole section for those reasons. I think that if we defeat this motion to delete and if this language is too broad, and as reasoning people we can amend this to where we can live with it and where it is reasonable for the State of Montana. And I don't think we should delete it in toto.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I think perhaps I should respond mainly to Delegate Harper. To start out with, as the cowboys say in Powder River County, "touche'" may be the proper word here. I don't blame Delegate Harper for thinking that those of us that he included in the majority, who are switching sides here—I think we have more information; it's a different situation than it was. I will point out to him that, to start out with, we had, we felt, the strongest environmental bill of any state in the United States. We didn't know how that would survive. If Delegate Harper had his way, it wouldn't have survived. But now, it has survived by very close votes, so this lessens the need, perhaps, for the section we're talking about. Another thing is that regardless of what we do here, we cannot apply it to federal land. Most of our coal is either on BLM land or Indian Department land. Our thinking was that if we could come out with a pretty good guideline, if you please, perhaps the Indians would accept this. They would write their own. This would be fine. Since that time, I have had word from Congressman Melcher's office. John Melcher is a fellow townsman of mine, a neighbor and a friend. He is on the Natural Resources Committee of the United States Congress, and that committee is attempting to draft some federal regulation that will cover the strip mining of coal land. Now, it's certainly in this area that any reclamation should be—is with a federal bill. Then it will cover all states. One won't have an advantage over the other on account of cost on this coal. It'll be distributed properly, the way it should be. It'll also cover the federal land. It will cover the Indian land. It will cover the state land and cover the private land. So, in view of that is, I think, the reason—I am not speaking for the other members—but this is my primary reason of feeling that the—perhaps this section isn't what we need, because it's too inclusive, as I said before. You cannot reclaim hard-rock mining land the same as you do coal land. And I will reiterate again that I certainly want to set some guidelines, not depend on men to protect this Montana land. I can remember when the present Colstrip pits—the old ones that the Northern Pacific left in such a bad way—through some of those years, that land wasn't worth 50 cents an acre. Why should we spend money to reclaim it? Get the coal out, sell it, forget about the land. Well, as we all know, that isn't the situation now. There's a great move on now. The land is very valuable; let's reclaim it. This is fine; we should. But what's going to happen 25, 50 years down the road? Maybe we go into another one of those drought periods. The land becomes valueless again in the minds of those people. Maybe these people sitting over here in Helena that are making the decisions on these contracts probably would be forced by the people, through the Legislature, to again say this land is valueless; let's get the coal out and sell it and forget about the land. Now, these are the things that bothers me. I would like to see something locked in so that we're not governed by men, but by laws, when we're talking about probably 500,000 acres of Montana land which has coal under it. I'm not talking about hard-rock mining. But I think that the federal bill will be the proper one. I would rather leave it to the Legislature at this time and see if the Congress of the United States does not come out with a federal bill. I think Senator Metcalf also mentioned that somewhere when he was here, and that will cover all of the land, and not piecemeal. Thank you, Mr. Chairman and Mr. Harper.

CHAIRMAN GRAYBILL: The Chair intends to recognize the rest of you, but we're debating the issue of Mr. Delaney's motion to delete. After we've had a vote on that, regardless of how it goes, we can either amend or add, but—

Mr. Swanberg, you were up next.

DELEGATE SWANBERG: Mr. President. It appears that the Legislature has anticipated this in this matter. And I refer the body to Section 50-1019 of the *Revised Codes of Montana*, which was passed in 1971. This is the beginning of a long law on opencut and strip-mine land reclamation. I will read Section 50-1019. "It is the policy of this state to provide for the reclamation and conservation of land subjected to opencut or strip mining and thereby to preserve natural resources, to aid in the protection of wildlife and aquatic resources, to safeguard and reclaim through effective means and methods all agricultural, recreational, home and industrial sites and—subjected to or which may be affected by opencut or strip mining, to protect and perpetuate the taxable value of the property, and to protect and promote the health, safety and general welfare of the people of this state." There follows after this a number of sections which would implement and make this law effective. We have another law on the books, passed in 1971, which has to do with dredge mining—Section 50-1101: "It is hereby declared to be the policy of the State of Montana to protect its lands, streams and watercourses from destruction by dredge mining and preserve the same for the enjoyment, use and benefit of all the people, and the clear and unpolluted water in the streams, rivers and lakes of Montana suitable for recreational, domestic, industrial, commercial and agricultural purposes is in the public interest." This section also precedes five or six pages of law concerning the implementation of that purpose. It would seem to me, therefore, fellow delegates, that the Legislature has already taken action on the matter. And I question whether we, at this time, with the limited amount of time here which we will have at our disposal, should second-guess them. And I support Mr. Delaney's motion for deletion.

CHAIRMAN GRAYBILL: Mr. Brazier.

DELEGATE BRAZIER: Mr. Chairman and fellow delegates. For your information and for Mr. Harper's information, the minority position on this question was, let's rely on subsection 1; it fully covers the matter, particularly—excuse me, Section Number 1; it fully covers the subject matter in subsection number 3, and let's delete proposed Section Number 2. This was a minority position, and we drafted a proposed comment for our report, and we were ruled out of order by our Chairman. And that explains why you don't have any comments. Now, one other thing. I think most everything I wanted to talk about has been covered, but for your information, during our deliberations we were addressing ourselves to the matter of coal. And it came to our attention that if we did that and confined ourselves to coal, we would find ourselves in direct violation of the 14th Amendment to the United States Constitution. So that explains why we expanded the subject matter. And we got into difficulty, because now we take in everything relating to the exploitation of resources. And what we're doing in this act is making a lot of innocent people pay for the assumed future sins of a few, which is unfair; and I can readily see that in individual cases, the proposal before you is going to run afoul of the 5th Amendment to the federal Constitution. To repeat the comments of Mr. Swanberg and others and what I've said earlier in this Convention, one way to tell whether it's legislative in subject matter or not is whether the Legislature has acted on the subject matter. It has done this regularly in the immediately preceding sessions, and I am confident it will do more in future sessions as it gains knowledge. Let's don't try to be a "super legislature". Let's leave it to the Legislature to do those things which are properly within its province. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President and fellow delegates. About 25 years ago in the south fork of the Flathead, a forest fire wiped out several hundred acres of very fine trees. Today they call it the "scorched-earth experimental forest". Across the road from this forest, it has grown back as nature would allow it. About 10 years after the fire, the Forest Service went in and thinned these trees to where the trees could grow. The larches that came up after the fire, grew about as thick as the hair on a dog's back. And after the thinning, the trees have grown. Today, 10 to 15 years later, those trees are growing at the rate of about five or six hundred board feet per acre. In a natural growth—a natural forest, they grow about 60 board feet per acre. In our Flathead area, the private industry—and when they're logging, even on government lands, there have been a lot of clearcuts—a few of them maybe not so good—but they've tried to clear these areas in a manner in which the trees would replant themselves. In many areas they do selective cutting, but the Forest Service in the Flathead, our private timber people up there, are doing a wonderful job and have been for many years practicing good forest habits. With the laws that have been passed recently on the burning of things and the air pollution, even our State Board of Health has a man up there, Jack Dodd, who tells the private landowners and wherever there has been cutting, when they can burn, the proper time for burning. It's nature's way, as most of you know, and was before man came here, to burn tremendous areas of land—uncontrolled forest fires. We've had them go through the Whitefish area, that whole area, in the—1909, 1914, 1919; and the whole thing was wiped out. Now, in order to create stands of timber, and especially where you see the lodgepole growing so very, very thick, (Inaudible) it requires a scorched-earth policy, you might say, or a scorched earth—a very hot fire to germinate the seeds that sometimes lay there for 50, a hundred years or more. And of course, in the clearcuts again, they have used the terrain—the natural terrain, and in some places they have made mistakes. But for many years we've been practicing these things. You may recall a few years ago where they had 60 experimental fires up in the north Flathead country, where they took 10-acre patches of timber, and after logging was completed, they had these fires at different times of the year to find out just how the earth would replenish and reseed itself. Now, I believe that our Legislature has made a good start toward doing these things. I don't think we have to be controlled by a lot more laws and things. I think that industry itself is doing a good job. We should leave this to the Legislature. Therefore, I support Mr. Delaney's motion to delete this Article II. It can make too much damage for our future generations. Thank you.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Fellow delegates. I can't believe it; I really can't believe it. I know I came here as an idealist, but I didn't expect to see what happened—what is happening now. If you delegates ran on the platform of supporting the company, I wonder how many of you would have been elected. I ran as an Independent, and I had many people ask me, "Well, do you support the company, or don't you?" But, to those of you who ran as Democrats, I can't believe the number of you who are supporting the company position. And I refer back to Delegate McDonough's remarks, because they're right to the point. This is strictly a company issue. And dragging in the gravel pits is almost absurd; and dragging in the Berkeley pit is almost as bad, too. Because all of you know that there's not going to be anything that's going to close the Berkeley pit in this section. And you good Democrats in Butte that support the people and you vote for the company, I guess that's the way of life or something. But I just can't understand it. And as a good Independent, I've certainly been educated on what happens in the course of politics. I rise to oppose the motion of my fellow delegate from Fergus County, because I know the people from Fergus County don't support the company. And I rise to explain my vote, because my good friend, Jim Felt, had to leave and we'll both be absent on the vote. But I strongly oppose the motion to delete. Thank you, Mr. Chair-. man.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Mr. President. While Mr. Brazier and Mr. Swanberg and Jacobsen were quite eager to praise the works of the Legislature, I'd like to point out to you the problem that I have contending all along. This act passed by the last session of the Legislature, the Dredge Mining Regulation and Land Preservation Act, was declared unconstitutional. On the very basis that we discussed another day, the same people that voted to keep that title provision in—the one-subject title provision—are the ones voting to delete this section. This good bill passed the last Legislative Session, was declared unconstitutional because it mentioned only dredge mining and didn't mention sluice mining. The whole intent was wiped out. We have made this possible in our Legislative Article to do this same thing again. It's time to take a stand now and decide what we're going to do in terms of the environment and quit passing the buck and hoping that the Legislature will do something that, in other areas, we've prohibited it from doing.

CHAIRMAN GRAYBILL: Mr. Scanlin was up quite a while ago.

DELEGATE SCANLIN: Mr. Chairman. You're damned if you do, and you're damned if you don't. Yesterday, I made the wrong move. I tried to restore some semblance of integrity to our committee system of operation. I got a telegram this morning, quote: "Your environmental speaking action and voting record Wednesday were poor. Please remember who you represent." Perhaps I chose the wrong proposal to restore some confidence in each other, but we've gone a long ways down the road now, ladies and gentlemen, to disrupt the system to which we are pledged. I support the article as it now stands.

CHAIRMAN GRAYBILL: Now, Mr. Siderius, you're next.

DELEGATE SIDERIUS: Mr. President. First of all, I want to thank Mr. Gysler for having so much concern over my gravel pit. I think he has more concern over my gravel pit than he does me—or myself—has more concern over my gravel pit than I do myself. I would like to read to you what has happened to our timber industry. This was taken from *The Industry and Commercial Geography* written by Russell Smith and Ogden Phillips. It is estimated that the original forests of the United States covered 822 million acres and contained 5,200 billion board feet of lumber. In 1938, our commercial forests occupied about 462 million acres, but only 213 million acres were covered with timber of saw-log size, of which is less—which half was virgin timber. For some years, we have been using timber at least twice as fast as it grows. No people, past or present, have used or abused their forest resources as the people of the United States. More than three-fourths of our present timber is located in the Pacific Coast States. The first great shift from the center of lumber production occurred in 1870's, when the output of Michigan, Wisconsin and Minnesota surpassed that of the Northeastern States. In the closing years of the century, leadership of lumber production passed from the three Great Lake States to the South. And again, in 1927, it shifted to the Pacific Coast. Of the nation's total production of twenty-eight and nine-tenths billion board feet of lumber in 1941, about 41 percent was cut in Oregon, Washington and California. No other people in the world use so much paper as do the people of the United States, which amounts to over 500 pounds per capita. The newsspread [newsprint] paper supply in the United States presents a serious problem. We imported, in 1944, from Canada 2,500,000 tons of newsprint paper, 1,100,000 tons of woodpulp and 1,600,000 cords of pulpwood. And I think it would be terrible if we supported Mr. Delaney's amendment, and I think we should support this Section 2 wholeheartedly. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Mr. Brown.

VICE-PRESIDENT BROWN: Mr. President. I think my position in this Convention has been clear, that I am very much against putting legislation into this Constitution. However, there are times when it becomes so important that I think we cannot ignore it, and I think this is one of the times. The people of eastern Montana are extremely concerned about their strip mining. And I hope you'll take Mr. Blaylock's position and vote against this deletion; and if we can't live with the present article, at least amend it. But we need a strong mandate on reclamation in this Constitution. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman and delegates. I come from the area in eastern Montana where there's going to be a big coal strip-mining boom. I don't think it will be personally affected as far as the economic part of it is concerned. A lot of our grazing land and land that we lease is—has been test core drilled, and there's quite a lot of coal in there. When they'll move in, I don't know. However—and you can see that I'm really concerned—our country is a beautiful country. I've been fortunate enough to live in one of the rare spots in Montana, as the few people who have been down in that area will certainly tell you. I and my neighbors are very concerned about reclamation or devastation, but I feel that the Legislature, in its efforts last time and in the future, the agreements that the private owners have had with the contracts that have been made, look okay to me, and I think we're progressing in this area. Now, the cowboys down in that country have been telephoning to me and writing letters. They're very concerned, but they say, "Don't tie these things up that we can't live with. Let the Legislature take care of it." I am opposed—I rise in support of the move to delete.

CHAIRMAN GRAYBILL: Now, I'm going to let Mr. Delaney finish. And we've debated this a long time, and I'm going to—it seems to me that it's going to be difficult not to be repetitious, but I don't want to cut anybody off. But if you're not repetitious and if you can be brief, go ahead.

I think Mr. Gysler, you were next.

DELEGATE GYSLER: Thank you Mr. Chairman. Would Mr. Foster yield to a question? Oh, he isn't here.

CHAIRMAN GRAYBILL: Mr. Foster. Mr. Foster, we want to ask a question of you.

DELEGATE GYSLER: I just wanted to ask Mr. Foster if he considered Charles Lindbergh a company man.

DELEGATE FOSTER: No, sir, Mr. Gysler.

DELEGATE GYSLER: Thank you, Mr. Foster. I just wanted to make that point, because as I said before—and I want it amply understood on the floor—As I said before, he was the one, after this article had been written and sent in, that said to us that this article is too strong. As far as I was concerned, we weren't only trying to write this article to cover coal mining and things that most of you think about; we were trying to write this article to cover the sump pits that the oil company—that's left in the oil fields when they drill a dry hole, or a good one. We were trying to make it all-encompassing, but I do realize that we need one that can be lived with. I am not one who believes that just because, with today's price of coal, we should sell the coal for anything we can get for it, whether we can reclaim the land or not. I am one who happens to believe that if the price of coal won't support the reclamation of that land today, then we wait for the day that it will and then we sell it. Thank you.

CHAIRMAN GRAYBILL: Mr. Harlow. Well, Mr.—I'm going to recognize you, but these people were up also with you, Mr. Delaney. Mr. Delaney, you may withdraw it, but we're going to have the debate.

Mr. Harlow, it's your turn. Do you want to take it or not?

DELEGATE HARLOW: I have a few new things, Mr. Chairman—

CHAIRMAN GRAYBILL: All right.

DELEGATE HARLOW: —to add to this group here. I will not be repetitious. You have all commented—the retainer fee people and the lobbied people that leave this up to the Legislature. Let me recall to you retainer fee people, and you research people, to look under the laws of the 1921 Legislature. They passed a law in 1921 prohibiting the damming of water—they prohibited the building of a dam outside of Montana and backing water into Montana without due, just compensation for Montana and without the continued compensation to Montana for the destroying of land by this water backed up into Montana from a dam built outside of Montana. The Legislature, in '21, thought that was a real good law and it would protect the water and the land of Montana from then on. Look in the Session Laws of 1951. An outside company that had no holdings in Montana whatsoever, the Washington Water Power Company, wanted to build a dam in Idaho to back water into Montana to produce hydroelectric power to be used in Idaho and Washington. But the statute that was passed in 1921 said they couldn't do it without paying money to Montana for the use of Montana's land and Montana's water. The company didn't like that. The retainer fee people said, "That's bad. We can't afford to charge Washington Water Power for the use of Montana water and Montana land." So, what happened? In 1951, if you will look up in the journal and look up in the records, you will find that Senate Bill Number 9 was introduced repealing the law passed in 1921. And that law passed through this check and balance Legislature ahead of the "Feed Bill". There you had a sample of your check and balance. So, I am thoroughly opposed to leaving this up to the Legislature. If we want to protect our land, and protect it the way we want to protect it, let's not leave it up to the Legislature or to the retainer and the lobbied individual.

CHAIRMAN GRAYBILL: Very well. Mr. Delaney.

DELEGATE DELANEY: As when I made the motion, I still feel that this Section 3 is not necessary, but I did not intend to embroil this body into the lengthy debate that it has been encompassed in. I would like to withdraw my substitute resolution and ask that the Chair might recognize Mr. Dahood for an amendment that makes this section acceptable to me.

CHAIRMAN GRAYBILL: Well, now, do you—are you going to withdraw it, or are you going to only withdraw it conditionally?

DELEGATE DELANEY: I will withdraw it completely.

CHAIRMAN GRAYBILL: All right, now, you've withdrawn it. Now, the problem with Mr. Dahood—I certainly will recognize him. I have had nothing up here from him that I know of, and I got three other amendments on this article ahead of yours. So, if you want to put yours in writing, Mr. Dahood, and send it up, I'll be glad to take it into consideration.

DELEGATE DAHOOD: Very well, Mr. Chairman. I will do that. I—

CHAIRMAN GRAYBILL: Mr. Dahood does not have the floor. You don't have the floor, no. I'm explaining to Mr. Delaney. He's withdrawn his motion. Now, there are a lot of people that have a lot of motions on this section. And I am taking them in order, or putting them in some semblance of order. So if you want an amendment, print it and send it up. I'll be glad to discuss it with you, and if it conflicts with somebody else's, I'll discuss it with them; but I am not going to allow a conditional withdrawal. If you want to withdraw it, you can withdraw it; if you want to vote on it, you can vote on it. But I'm not going to be bound at the Chair as to who's next, because other people have rights too.

Now, Mr. Delaney, do you want to withdraw?

DELEGATE DELANEY: No, I don't believe I do.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Delaney's motion. Is there further pertinent debate? If not, Mr. Delaney, you may close.

DELEGATE DELANEY: I don't believe there's any necessity of saying anything more. I think everybody has had a say here. I think we've heard it very adequately discussed. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Okay. Now, the issue is on Mr. Delaney's motion that we delete Section 2 of the Natural Resources report on Environment, lines 19 to 24. I presume you want a roll call vote. So many as are in favor of deleting it, vote Aye; so many as are opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the vote.

Aasheim	Nay
Anderson, J.	Aye
Anderson, O.	Nay

Arbanas	Nay
Arness	Absent
Aronow	Nay
Artz	Nay
Ask	Aye
Babcock	Aye
Barnard	Nay
Bates	Aye
Belcher	Aye
Berg	Absent
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Nay
Brazier	Aye
Brown	Nay
Bugbee	Nay
Burkhardt	Nay
Cain	Nay
Campbell	Absent
Cate	Nay
Champoux	Nay
Choate	Nay
Conover	Nay
Cross	Nay
Dahood	Aye
Davis	Aye
Delaney	Aye
Driscoll	Aye
Drum	Aye
Eck	Nay
Erdmann	Aye
Eskildsen	Aye
Etchart	Aye
Felt	Absent
Foster	Absent
Furlong	Nay
Garlington	Aye
Graybill	Nay
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Aye
Hanson, R.	Absent
Harbaugh	Nay
Harlow	Nay
Harper	Nay
Harrington	Nay
Heliker	Nay
Holland	Aye
Jacobsen	Aye
James	Nay
Johnson	Aye
Joyce	Aye
Kamhoot	Nay
Kelleher	Nay
Leuthold	Nay
Loendorf	Nay
Lorello	Aye
Mahoney	Nay
Mansfield	Nay
Martin	Aye
McCarvel	Aye
McDonough	Nay
McKeon	Nay
McNeil	Nay
Melvin	Nay
Monroe	Nay
Murray	Aye
Noble	Aye
Nutting	Nay
Payne	Absent
Pemberton	Aye
Rebal	Nay
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	Nay
Rygg	Aye
Scanlin	Nay
Schiltz	Nay
Siderius	Nay
Simon	Aye
Skari	Nay
Sparks	Aye
Speer	Nay
Studer	Aye
Sullivan	Aye
Swanberg	Aye
Toole	Aye
Van Buskirk	Nay
Vermillion	Nay
Wagner	Nay
Ward	Nay
Warden	Nay
Wilson	Nay
Woodmansey	Nay

CHAIRMAN GRAYBILL: Now, while the vote is being taken, I would like to explain that I do have an obligation to other people who take their turn, and I just have to let them have their chance. If you want to make an amendment, everybody can have his chance; but you'll have to get it to me in writing unless it's so minor that we don't need it in writing.

CLERK SMITH: Mr. Chairman, 33 voting Aye, 68—60 voting No.

CHAIRMAN GRAYBILL: 60 having

voted No, 33 voting Aye, the motion to delete fails. Mr. Belcher, for what purpose did you rise?

DELEGATE BELCHER: Mr. Chairman, I was asked to pair my vote with Mr. Campbell, but as long as it's defeated, that's all right.

CHAIRMAN GRAYBILL: Very well. Now, Mr. Ask, you had an amendment. Do you wish to make it next?

DELEGATE ASK: Mr. Chairman. I sent this up, but I would like to add one sentence in, if I could.

CHAIRMAN GRAYBILL: Very well. Can you read it to us.

DELEGATE ASK: I would take the first sentence of Section 2, "All lands disturbed by the taking of natural resources must be reclaimed", and then go on from the one I've submitted to the Chair.

CHAIRMAN GRAYBILL: Your amendment then is, "All lands disturbed by the taking of natural resources must be reclaimed, period." Right?

DELEGATE ASK: Yes.

CHAIRMAN GRAYBILL: Then, the sentence, "The Legislature shall provide effective requirements and standards for reclamation of lands disturbed by the taking of natural resources"—is that correct?

DELEGATE ASK: Yes.

CHAIRMAN GRAYBILL: Very well. I don't know if you have this. This is not out, is it?

DELEGATE ASK: No, it is not out.

CHAIRMAN GRAYBILL: All right. Now, so that everybody understands the nature of the amendment. We're discussing Section 2. The first sentence would be: "All lands disturbed by the taking of natural resources must be reclaimed." Then put a period, on line 20, after "reclaimed". Then add this sentence: "The Legislature shall provide effective requirements and standards for the reclamation of lands disturbed by the taking of natural resources." Therefore, Mr. Ask has an amendment which would make Section 2 read: "All lands disturbed by the taking of natural resources must be reclaimed. The Legislature shall provide effective requirements and standards for the reclamation of lands disturbed by the taking of natural resources." Mr. Ask.

DELEGATE ASK: Mr. Chairman. I feel that this wording of this section, now, that's just being submitted to you should cover everyone's requirements. It says, to start with, "All lands disturbed by the taking of natural resources must be reclaimed"—must be. Then it goes on: "The Legislature shall provide effective requirements and standards for the reclamation of lands disturbed by the taking of natural resources." I think this is what we're after. Like I said before, I'm not against reclamation; but if you read the other section, it said, "to as good a condition or use", which is an impossibility. You'd just stop mining, you'd stop timbering, you'd stop a lot of agricultural activity. But we're getting at what we want here. It must be reclaimed, but the Legislature sets the effective standards. Every area of the state is different. You can't put one rule down for the entire State of Montana. And think this reaches it, and I think it's real strong and effective. I want to be brief so we can get on with the voting. Thank you.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I support the motion that's before the Convention at this time. Frankly, Delegate Delaney and I had basically the same idea in mind—that this would solve the problem; the broad language is necessary. It declares the policy of the people of the State of Montana; provides a guideline to the Legislature; allows them, from year to year, to survey the situation and make whatever change in the law might be necessary to carry out the public policy of the people of this state for reclamation that's going to serve the general welfare. I support the motion that's before the floor.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman. I rise, also, to support this motion. I talked this morning with Ted Schwinden and—about this section, because I had talked with a number of environmentalists who had been confused by the wording. This is basically the language he suggested to me. And I think it will do the job for us. Thank you.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President. I also support this language. I think it's good; I think it's strong. And I agree with Delegate Ask.

CHAIRMAN GRAYBILL: Mr. Delaney.

DELEGATE DELANEY: I support this motion, as it is virtually the same wording as Mr. Dahood and I had agreed upon. This is virtually the same wording that I'd wanted to withdraw my other motion for. I support it. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harrington.

DELEGATE HARRINGTON: Mr. Chairman. I rise to support this motion. I feel there must be something in the Constitution, something that definitely states the reclamation of land. Thank you.

CHAIRMAN GRAYBILL: Now, the Chair doesn't want to cut anybody off, but does anybody oppose this? I'd like to recognize somebody on the other side.

Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman. I support this amendment.

CHAIRMAN GRAYBILL: One of my guidelines yesterday was that if you want to register your support, do it with your vote. Does anybody have any other—anybody oppose it?

Mr. McDonough.

DELEGATE McDONOUGH: Mr. Chairman, I oppose this motion for the reason that it leaves to the Legislature how to define the word "reclaimed" and to what extent it should be reclaimed. At least, the original one put some guidelines in as to how it is to be restored and to what extent.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: Would it be in order, Mr. Chairman, to ask what the other amendments to this were going to be? It seems to me if we had a choice, it would be interesting.

CHAIRMAN GRAYBILL: Well, the Chair can tell you that Mrs. Eck had one, which she has pointed out is similar to this. Mr. Romney, of course, had one in which he was going to use the second half of the first sentence but make it to "as good a condition or use as is possible". I haven't seen Mr. Dahood's.

DELEGATE BURKHARDT: Would Mrs. Cross yield to a question?

CHAIRMAN GRAYBILL: Mrs. Cross.

DELEGATE CROSS: Yes.

DELEGATE BURKHARDT: Louise, you've lived with this for weeks and have had much difficulty in getting your concern expressed. How do you feel about this amendment?

DELEGATE CROSS: I'm going to be real honest here. When it was first proposed, I thought it would be fine. I have consulted someone whom I think is a remarkable man for analysis, and that is Mr. McDonough, and he tells me that it doesn't say anything.

DELEGATE BURKHARDT: That's what I thought. Thank you.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: I rise in opposition to this amendment. As has been said, it doesn't do anything. What do we mean by "reclaim"? And I use the same argument that you've just heard: the Legislature can—may set up some real good standards right now, and some other bigger companies—some outside company—wants to come in and deplete some resources that we do not know about, that we have in Montana now; they can't live with the law that's on the books and so they bring the dear old lobby and pressure to bear and the Legislature change the law and we go back to nothing in the Constitution. We must—in defining the method in which we want to maintain our environment here in Montana, we must put something in the Constitution that cannot be changed overnight. I resist this amendment.

CHAIRMAN GRAYBILL: Is there other discussion?

Mr. Mahoney.

DELEGATE MAHONEY: Mr. President—or Chairman, would Mr. Ask yield to a question?

CHAIRMAN GRAYBILL: Mr. Ask?

DELEGATE ASK: Yes, I'll yield.

DELEGATE MAHONEY: You, I believe, stated that this would be flexible and pliable. Would this allow one thing for the Roundup country and another thing for down in the Decker country?

DELEGATE ASK: Yes. I think this gives flexibility. I don't think there's an acre of land in Montana that's the same. And I think you're going to have to have different standards to put it into force. But this section says they must reclaim it and sets the standards. I think this meets our needs here.

DELEGATE MAHONEY: Now, another question. Then, if you were just over the hill and a new mining company come in, and one was already operating, and they says, "Now, we will come in if you'll give us this special law for this area." Could this happen?

DELEGATE ASK: Well, I suppose it could, but I can't feature the Legislature going along with it.

DELEGATE MAHONEY: Oh, listen now. The Legislature can do anything. (Laughter)

DELEGATE ASK: Mr. Mahoney. If the Legislature sets up effective requirements and standards, I think it applies all over the state, no matter who—some old or some new company coming in. If they change the standards, they're going to have to change it for everyone through the entire state.

DELEGATE MAHONEY: This is not the way you answered when you said they could be different at Roundup and different at Decker.

CHAIRMAN GRAYBILL: Mr. Mahoney, you asked your question. Now, do you want the floor?

DELEGATE MAHONEY: Whenever he gets through. I—

CHAIRMAN GRAYBILL: Are you through with your answer, Mr. Ask?

DELEGATE ASK: Yes.

CHAIRMAN GRAYBILL: Very well.
Mr. Mahoney.

DELEGATE MAHONEY: This is what can happen under this thing where you turn it over to the Legislature—that they can come in and decide that a new industry—Now, we saw what the Legislature did when they gave the Anaconda Company the right of eminent domain. No other company had this right to go out and mine and take people's property on the right of eminent domain. And this was put through the Legislature. So, this can be done special for an individual thing; and I think when you put this in, you're legalizing special things in the Constitution. This is my opinion of this amendment. I'm sorry, Mr. Chairman. I don't have a copy of it on my desk to study. It's a very critical thing. It's too bad that we're asked to operate upon this important a thing with being read by—and I think you've done a nice job of reading it—but we certainly should be—a little time to study it.

CHAIRMAN GRAYBILL: Mr. Mahoney. Since it probably isn't going to be printed, I might read it again for you, and it might help. "Section 2. Reclamation. All lands disturbed by the taking of natural resources must be reclaimed." You put a period after reclaimed. Now, that much of the language is before you. Then the second sentence says: "The Legislature shall provide effective requirements and standards for the reclamation of lands disturbed by the taking of natural resources."
Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. In order to bring this to a head, I offer the following amendment to the Ask amendment. After the word "reclaimed", add "to as good a condition or use as is possible", period. And then continue and then retain the rest of the section, or subsection. Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. I understand it to be the sense of your motion that you add, after the word "reclaimed", the sense of your prior proposed amendment, which is "to as good a condition or use as is possible", retaining the rest of Mr. Ask's language.
Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. I think it—that would be a qualifying statement expressing how it is to be reclaimed, meeting, at least to a meager extent, the objections of Delegate McDonough, in which I concur, and I think that the rest of this matter has been thoroughly debated and I don't need to go over it again.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. It just impressed me, as I got to listening to all these things, that all of a sudden I find that no where in here does it say who's going to do the reclaiming. As far as I can read that thing and everything that's been in there so far, it could require the state to do the reclaiming. I wonder if Mr. Romney would just add something like "by the disturber" in there. Really, I mean it. For Mr. Harlow, I'll do this for the $20 fee I'm getting paid for this 15-hour day I'm putting in.

DELEGATE ROMNEY: Mr. Chairman, do I—may I reply?

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: I would have no objection. Of course, that is already handled by statute.

CHAIRMAN GRAYBILL: Mr. Romney, is it your purpose to add Mr. Schiltz's words to your amendment or not? He wants it to say "to as good a condition as possible by the disturber".

DELEGATE ROMNEY: I think not so, sir, because that would require considerable action by the—

CHAIRMAN GRAYBILL: You don't have to explain why. I just want to know if it's in or out. All right. The issue is on Mr. Romney's motion to add "to as good a condition or use as is possible".
Mr. Davis.

DELEGATE DAVIS: I must oppose this amendment. That's much stronger language than it says—"to as good a condition or use as prior to the disturbance." It's possible to improve the land, particularly where a lot of the mining is in our area, where it's rocky—stoney. I don't know where you'd get the rocks to put back on it, and so forth; where Mother Nature has slide areas, and so forth. I wanted to support the other one and appeal to my fellow delegates to go ahead and vote on this. Everyone got a good day in yesterday of talking. I think we should follow our President's guideline today. If everyone felt that they picked the lawyers out and made a few statements against them and everyone. Let's go ahead and vote on this—we're not going to change a lot of minds—and go and try to finish our work here. On this particular amendment, it's not any—it's making it more difficult to pass as possible. You can make grazing land irrigated land; that's possible, even if you have to import the water. Or you can put flowers on land; that's possible. When you say "as good a condition as possible", you're going the other way from trying to reach a compromise, which I think we're all trying to do here. I'm hopeful we can reach a sensible compromise, because, actually, we all want the land reclaimed. But when you get right down to it, it's still going to be the Legislature that's meeting 20 years from now, instead of what we write in here today, that's going to have to implement this in a practical manner in this state. So I submit that the substitute—or amendment of Mr. Romney's is creating more of an impasse. And if we defeat that, then we can pass the other one and get on with the rest.

CHAIRMAN GRAYBILL: Very well, the—
Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, I—would Mr. McDonough yield to a question?

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: I yield.

DELEGATE BLAYLOCK: Mr. McDonough, would you give us your feeling of what this addition by Mr. Romney—is this too far; is it adequate?

DELEGATE McDONOUGH: I think it's too far and too strenuous.

CHAIRMAN GRAYBILL: Mr. Brazier.

DELEGATE BRAZIER: Mr. Chairman and fellow delegates. I want to make one point with you, and then I'm going to quit trying to put my finger in the dike.

CHAIRMAN GRAYBILL: Okay, let's hear it.

DELEGATE BRAZIER: I promise for you, Mr. Chairman, not to speak unless spoken to again. But I would like to get this point across once and for all.

CHAIRMAN GRAYBILL: I just want you all to speak quickly. I want to do this before noon.

DELEGATE BRAZIER: The only dealing that I've had with the Anaconda Company was a case about eight years ago in the Supreme Court, where I represented a widow. The Anaconda Company showed up at the last minute, spoke to the court and said, "If you rule in favor of Mr. Brazier's widow, we're going to lose a hundred thousand dollars." Now, I think you all know who won and who lost that case.

CHAIRMAN GRAYBILL: Now, Mr. Brazier, how is that pertinent to Mr. Romney's amendment?

DELEGATE BRAZIER: If you'll indulge me for about two more sentences, I can get right on it.

CHAIRMAN GRAYBILL: Okay, get with it.

DELEGATE BRAZIER: Okay. Now, the point is that bad law was made. We took it to the Legislature and corrected it. Now, the point I'm trying to make here is, we've got a proposal that we're going to restore this land to as good a use as possible. Somewhere in the future, there's going to be a lawsuit brought by the state or by an individual against one of these coal mining companies for not restoring to as good a use as possible. That company is going to put in evidence that that rotten terrain left out there is as good as they could possibly put it. The District Court is going to rule against the company, and it's going to come up here to the Supreme Court. The Supreme Court is going to rule that, as a matter of law, that sloppy reclamation is as good as possible. You will not be able to go to the Legislature to overrule the Supreme Court, because it's in the Constitution. You will not be able to go to the federal courts, because it's a state matter. You will not be able to vote out your Supreme Court Judge, because you gave him eight years, and if you do remember, after eight years, that he's the guy that did it, he's going to be replaced by a candidate who is proposed by a committee made up of the same people who put that judge in to begin with. What I've been trying to tell you is, this is legislative. Let's let the Legislature fight the battles. Don't let the big companies lock you into a bad position. Mr. Chairman, I resist Mr. Romney's amendment.

CHAIRMAN GRAYBILL: Mr. Romney—Mr. Rebal, do you want to speak, please?

DELEGATE REBAL: I certainly do. Mr. President and fellow delegates. According to *Webster's New World Dictionary*, the definition of "reclaim" is "to make unproductive land useful". I believe your committee's thoughts are to make certain that provisions would be made to restore the land to a beneficial use—that beneficial use to be determined prior to the disturbance of the land. This effort has the best of intentions, but the far-reaching effects that may occur will not affect just the company; it may be an infringement on individual rights also. I still think an amendment could possibly be made to do what may be required to accomplish our mutual objective. But I do not have the words, and I hope to hear them yet. Thank you.

CHAIRMAN GRAYBILL: Mr. Romney, you may close.

DELEGATE ROMNEY: Mr. Chairman, delegates. I think that the definition just read by Delegate Rebal is a demonstration of the adequacy of the phraseology that is in this amendment. I also point out that in refuting Delegate Brazier's statement that—the final sentence of the subsection, "The condition or use to which the land is to be reclaimed and the method of enforcement of the reclamation must be established by the Legislature." So I think that establishes that his fears are groundless, and I think it shows a qualification of the word "possible". And I think that everything is hunky-dory.

CHAIRMAN GRAYBILL: Do you want a roll call vote? Very well. All in favor of Mr. Romney's motion, which is to add the phrase "reclaim to as good a condition or use as is possible"—all in favor of that, vote Aye; all opposed, vote No.

For what purpose do you rise, Mr. Habedank?

DELEGATE HABEDANK: Mr. Chairman. As I understood Mr. Romney's motion, it was to the Ask amendment.

CHAIRMAN GRAYBILL: It is.

DELEGATE HABEDANK: Mr. Romney just spoke to an entirely different matter. And I agree with his latter comments, but we cannot vote intelligently to the one if he meant to—

CHAIRMAN GRAYBILL: I understand your point. Mr. Romney read the last half of the sentence here. Mr. Ask has substituted a different form of legislative referral to that in the book. However, Mr. Romney made his amendment to the sentence Mr. Ask fashioned by putting a period after "reclaimed". The first sentence under Mr. Romney would read: "All land disturbed by the taking of natural resources must be reclaimed to as good a condition or use as is possible." Now, that's all you really need to know. It's going to—we're not through with the sentence. It still is going to have this legislative thing. "The Legislature shall provide effective requirements", and so forth, goes on it. He's amending Mr. Ask's amendment. All in favor of Mr. Romney's motion, vote Aye; and opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the vote.

Aasheim	Nay
Anderson, J.	Nay
Anderson, O.	Nay
Arbanas	Nay
Arness	Absent
Aronow	Nay
Artz	Nay
Ask	Nay
Babcock	Nay
Barnard	Aye
Bates	Aye
Belcher	Nay
Berg	Absent
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Nay
Brazier	Nay
Brown	Nay
Bugbee	Nay
Burkhardt	Aye
Cain	Nay
Campbell	Absent
Cate	Aye
Champoux	Aye
Choate	Nay
Conover	Nay
Cross	Nay
Dahood	Nay
Davis	Nay
Delaney	Nay
Driscoll	Nay
Drum	Nay
Eck	Aye
Erdmann	Nay
Eskildsen	Nay
Etchart	Nay
Felt	Absent
Foster	Absent
Furlong	Aye
Garlington	Nay
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Aye
Harlow	Aye
Harper	Aye
Harrington	Nay
Heliker	Aye
Holland	Aye
Jacobsen	Nay
James	Nay
Johnson	Nay
Joyce	Nay
Kamhoot	Nay
Kelleher	Aye
Leuthold	Nay
Loendorf	Aye
Lorello	Nay
Mahoney	Aye
Mansfield	Nay
Martin	Absent
McCarvel	Nay
McDonough	Nay
McKeon	Aye
McNeil	Nay
Melvin	Nay
Monroe	Aye
Murray	Nay
Noble	Nay
Nutting	Nay
Payne	Absent
Pemberton	Aye
Rebal	Nay
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Aye
Romney	Aye
Rygg	Aye
Scanlin	Nay
Schiltz	Aye
Siderius	Aye
Simon	Nay
Skari	Nay
Sparks	Nay
Speer	Aye
Studer	Nay
Sullivan	Nay
Swanberg	Nay
Toole	Nay
Van Buskirk	Nay
Vermillion	Aye
Wagner	Nay
Ward	Nay
Warden	Aye
Wilson	Nay

Woodmansey	Nay
Mr. President	Nay

CLERK SMITH: Mr. President, 29 voting Aye, 64 voting No.

CHAIRMAN GRAYBILL: 64 having voted No and 29 having voted Aye, Mr. Romney's motion is defeated. We're back on Mr. Ask's amendment. Mr. Ask's amendment says: "All lands disturbed by the taking of natural resources must be reclaimed. The Legislature shall provide effective requirements and standards for the reclamation of lands disturbed by the taking of natural resources." Is there further debate?

Mr. Schiltz, do you want to amend it?

DELEGATE SCHILTZ: No.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. Chairman. I sat back and listened with a great deal of interest to the debate about the reclamation of land in eastern Montana. I happen to live right in this area and own quite a little land that will be affected by the mining of coal—strip mining of coal. I have no objection to Mr. Ask's motion. I do agree with Mr. Schiltz. It has bothered me quite a long time that the State of Montana is in the reclamation business. And I feel that some definition should be added here that would provide that the industry that is mining the coal should pay for the reclamation of the land, and I submit this for the delegates' consideration.

CHAIRMAN GRAYBILL: Is there further discussion of Mr. Ask's amendment to Section 2? Very well. The question is on Mr. Ask's amendment, which would put a period after the word "reclaimed" in line 20 on page 3, so that Section 2 would read: "All lands disturbed by the taking of natural resources must be reclaimed." It would then add the following sentence in place of the rest of the section. "The Legislature shall provide effective requirements and standards for the reclamation of lands disturbed by the taking of natural resources." We'll have a roll call vote. So many as shall be in favor, vote Aye; so many as shall be opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Take the vote, please.

Aasheim	Aye
Anderson, J.	Aye
Anderson, O.	Aye
Arbanas	Aye
Arness	Absent
Aronow	Aye
Artz	Nay
Ask	Aye
Babcock	Aye
Barnard	Aye
Bates	Aye
Belcher	Aye
Berg	Absent
Berthelson	Nay
Blaylock	Aye
Blend	Aye
Bowman	Aye
Brazier	Aye
Brown	Aye
Bugbee	Aye
Burkhardt	Aye
Cain	Aye
Campbell	Absent
Cate	Nay
Champoux	Nay
Choate	Aye
Conover	Aye
Cross	Nay
Dahood	Aye
Davis	Aye
Delaney	Aye
Driscoll	Aye
Drum	Aye
Eck	Aye
Erdmann	Aye
Eskildsen	Aye
Etchart	Aye
Felt	Absent
Foster	Nay
Furlong	Aye
Garlington	Aye
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Nay
Harlow	Nay
Harper	Nay
Harrington	Aye
Heliker	Aye
Holland	Aye
Jacobsen	Aye

James	Aye
Johnson	Aye
Joyce	Aye
Kamhoot	Aye
Kelleher	Aye
Leuthold	Nay
Loendorf	Aye
Lorello	Aye
Mahoney	Nay
Mansfield	Aye
Martin	Absent
McCarvel	Aye
McDonough	Nay
McKeon	Absent
McNeil	Nay
Melvin	Absent
Monroe	Nay
Murray	Aye
Noble	Aye
Nutting	Aye
Payne	Absent
Pemberton	Aye
Rebal	Aye
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	Nay
Rygg	Aye
Scanlin	Nay
Schiltz	Nay
Siderius	Nay
Simon	Aye
Skari	Aye
Sparks	Aye
Speer	Nay
Studer	Aye
Sullivan	Aye
Swanberg	Aye
Toole	Aye
Van Buskirk	Nay
Vermillion	Nay
Wagner	Nay
Ward	Nay
Warden	Aye
Wilson	Aye
Woodmansey	Aye
Mr. President	Aye

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Could I explain my vote? I oppose—I voted for this, but I really oppose it because I think it says nothing.

CHAIRMAN GRAYBILL: Very well. Will you please announce the vote?

CLERK SMITH: Mr. Chairman, 63 voting Aye, 29 voting No.

CHAIRMAN GRAYBILL: 63 having voted Aye, 29 having voted No, the amendment of Mr. Ask is adopted. The section now reads: "All lands disturbed by the taking of natural resources must be reclaimed. The Legislature shall provide effective requirements and standards for the reclamation of lands disturbed by the taking of natural resources." Is there further discussion?

Mr. Cate.

DELEGATE CATE: I move to amend Section 2 as amended by adding, after the words "reclaimed", "to a beneficial and productive use". The remainder of the paragraph would read as amended by Mr. Ask.

CHAIRMAN GRAYBILL: Mr. Cate has proposed an amendment to add, after the word "reclaimed", "to a beneficial and productive use". We'll have a roll call vote on it. All in favor of Mr. Cate's proposal to add, after the first word "reclaimed", that phrase, so that the first sentence would read: "All lands disturbed by the taking of natural resources must be reclaimed to a beneficial and productive use." All in favor, vote Aye on the voting machines; all opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the vote.

Aasheim	Nay
Anderson, J.	Nay
Anderson, O.	Nay
Arbanas	Aye
Arness	Absent
Aronow	Nay
Artz	Aye
Ask	Nay
Babcock	Nay
Barnard	Aye
Bates	Absent
Belcher	Absent
Berg	Absent
Berthelson	Nay
Blaylock	Aye
Blend	Aye

Bowman	Aye
Brazier	Aye
Brown	Aye
Bugbee	Aye
Burkhardt	Aye
Cain	Aye
Campbell	Absent
Cate	Aye
Champoux	Aye
Choate	Aye
Conover	Aye
Cross	Aye
Dahood	Absent
Davis	Nay
Delaney	Nay
Driscoll	Nay
Drum	Aye
Eck	Aye
Erdmann	Nay
Eskildsen	Nay
Etchart	Aye
Felt	Absent
Foster	Aye
Furlong	Aye
Garlington	Nay
Gysler	Nay
Habedank	Aye
Hanson, R.S.	Nay
Hanson, R.	Aye
Harbaugh	Aye
Harlow	Aye
Harper	Aye
Harrington	Aye
Heliker	Aye
Holland	Aye
Jacobsen	Aye
James	Aye
Johnson	Nay
Joyce	Nay
Kamhoot	Aye
Kelleher	Aye
Leuthold	Aye
Loendorf	Aye
Lorello	Nay
Mahoney	Aye
Mansfield	Aye
Martin	Aye
McCarvel	Aye
McDonough	Aye
McKeon	Aye
McNeil	Aye
Melvin	Absent
Monroe	Aye
Murray	Nay
Noble	Nay
Nutting	Aye
Payne	Absent
Pemberton	Nay
Rebal	Aye
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Aye
Romney	Aye
Rygg	Nay
Scanlin	Aye
Schiltz	Aye
Siderius	Aye
Simon	Nay
Skari	Aye
Sparks	Nay
Speer	Aye
Studer	Absent
Sullivan	Nay
Swanberg	Nay
Toole	Aye
Van Buskirk	Aye
Vermillion	Aye
Wagner	Aye
Ward	Aye
Warden	Aye
Wilson	Nay
Woodmansey	Aye
Mr. President	Aye

CLERK SMITH: Mr. Chairman, 63 voting Aye, 27 voting No.

CHAIRMAN GRAYBILL: 63 having voted Aye, 27 voting No, Mr. Cate's amendment passes. The sentence now reads: "All land disturbed by the taking of natural resources must be reclaimed to a beneficial and productive use." The second sentence reads: "The Legislature shall provide effective requirements and standards for the reclamation of lands disturbed by the taking of natural resources." Is there further discussion? Very well.

Mr. Ask, will you move that your—that when this committee does arise and report, after having had under consideration Section 2 as amended, that the same be recommended for adoption? Will you so do?

DELEGATE ASK: Mr. Chairman, I so move.

CHAIRMAN GRAYBILL: Very well. All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: Section 2 is adopted as amended. Will the clerk read Section 3, sub. 1?

CLERK SMITH: "Section 3. Water rights, sub. 1. All existing rights to the use of any waters in this state for any useful or beneficial purpose are hereby recognized and confirmed." Subsection 1, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Section 3, subsection 1, it recommend the same be adopted.

CHAIRMAN GRAYBILL: Very well. Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman. In presenting the committee's comments, I would like to beg your indulgence and present the comments for all six subsections at the same time. They are all related to each other. Your committee feels that water and water rights are of crucial importance to the past history and future development of the State of Montana. For this reason, the committee feels justified in expanding the present constitutional section, which relates solely to the use of water, to include provisions for the protection of the waters of the state for use by its people. Subsection 1, as read by the clerk, guarantees all existing rights to the use of water and includes all adjudicated rights and nonadjudicated rights, including water rights for which notice of appropriation has been filed, as well as rights by use for which no filing is of record. Subsection 2 is a verbatim duplication of Article III, subsection 15, of our present Constitution and has been retained in its entirety to preserve the substantial number of court decisions interpreting and incorporating the language of this section. Subsection 3 is a new provision to establish ownership of all water in the state subject to use by the people. This does not, in any way, affect the past, present or future right to appropriate water for beneficial uses and is intended to recognize Montana Supreme Court decisions and guarantee the State of Montana's standing to claim all of its waters for use by the people of Montana in matters involving other states and the United States government. Subsection 4 is a new provision to permit recreation and stock watering to acquire a water right without the necessity of a diversion. This applies only to future rights and, of course, only to waters for which there are no present water rights. This subsection further provides that future agricultural and industrial water development will not be foreclosed by recreation, as it is left up to the Legislature to determine the method of establishing a future water right without a diversion; and the Legislature is further authorized to establish priorities of water uses, where the Legislature determines priorities necessary. Subsection 5 acknowledges a continuance of our present water law principle that the first appropriation in time is the better right and provides that no future appropriation shall be denied except in the public interest. Subsection 6 mandates the Legislature to administer, control and regulate water rights. This does not in any way change the present legislatively established system of local control of adjudicated waters by water commissioners appointed by the District Court having jurisdiction. A new requirement is added to establish a system of centralized records of all water rights, in addition to the present statutory system of local filing of records. The centralized records are intended to provide a single location for water rights information and a complete record of all water rights. I ask that, as we take these subsection by subsection, please keep all of them in consideration and please don't be careless in style and drafting type amendments. This is a very technical area. Thank you.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: I think that this matter of water rights for the State of Montana is undoubtedly the single one—single most important item that is going to come before our Convention. I think perhaps I think this because I grew up in the Dark Ages up on the Hi-Line, where we had to haul water from reservoirs and store it in cisterns. Our 1889 Constitution failed to declare Montana water the property of the State of Montana and its citizens. All other Western States have done this. We are presently laboring under a great disadvantage in negotiating and coming into water pacts with all of our neighboring states and protecting ourselves against their needs in the future and against the federal agencies. Water is not like land. It just—water runs on and on. The bulk of our water that flows into the Missouri, Mississippi and the Columbia River basins all originate up in the Montana Rockies. Yet, as a state, we are absolutely powerless in protecting our future needs for both irrigation and expansion against ambitious federal agencies and thirsty downstream neighbors. They will have all of their water needs documented very well by the time that the present moratorium ends. We have only six years in which to do this, and I don't anticipate another Constitutional Convention in six years. We have to do this right now. If we don't clean up this water mess that we have now, our state will—our water can be diverted into downstream watersheds. The federal agencies, of course, always say they don't come in and divide the water until the states have failed to do this. As I say, we have only six years left to do this. Our—my concern, therefore, concentrates itself right on subsection 3, where we declare it to be—the water to be the property of the state for the use of the people in Montana, and subsection 6. Now, this may not seem to be very important to you to set up a central filing agency, but it's tremendously important. Our water rights mean absolutely nothing. They say 75 percent of our water rights that are now filed are absolutely meaningless for this one reason. All we've ever had to do—we've just existed by the old mining law, "first in time, first in right". And anybody—in order to file for a water right, all you have to do is go down to your courthouse. Now, when I was mayor of Great Falls, I found, to my utter dismay, no one had ever appropriated for a drop of the water for the state. At that time, we had been—we were processing our city water, selling it to two communities, Malmstrom Air Force Base, also we were selling it to the Anaconda Company, who, in turn, sold that same water to the town of Black Eagle. We sold it to the refinery, and we sold it to the brewery. And not a drop of this had been ever appropriated. So, when I went down, I had the attorney draw up the appropriation papers, and he said, "Well, you know, Marian, this really doesn't mean anything. We'll file them." And we did, and I don't know how many cities in Montana have even done that. But we went down there and found that most of these streams in the—that come into the Missouri and the Sun, and particularly the Missouri about—around Great Falls, had already been filed on for all the water that did flow or ever would flow. And I do know that you would recognize the rights of a city, but at the time that the city bought their water from the old private water works, the city's uses were very, very small and would certainly not accommodate the use that the City of Great Falls is now using. And besides this, we don't want to cripple our state in the future without being sure that we can reserve enough water right here in the state to take care of all of our future industrial and irrigation needs. And so, I want you to watch paragraphs 3 and 6. And I thank you, Mr. President.

CHAIRMAN GRAYBILL: All right. Now, the Chair has had read Section 1—subsection 1 of Section 3. And I have before me some amendments to subsections 4 and 5. I have no amendments proposed to subsections 1, 2 or 3. If anyone cares to stand and speak about or in opposition to subsection 1 of Section 3, I wish they would do so. Otherwise, I will expect you to stay on subsection 1, and we'll get that disposed of.

Mr. Davis.

DELEGATE DAVIS: I first should disclose that I have an interest in the subject. I'm attorney for a water company, where we build a dam and irrigate many thousand acres of land. I also have clients who float on the water, fish in the water, and drink the water occasionally. So, I have a great interest in it. The whole purpose, just for the purpose of the journal, is to establish, in this first sentence, that all existing water rights are recognized and confirmed—so no one will get any idea that we're trying to take away any vested or existing rights. And I make that statement merely for the journal. And if there is any dissent or difference of opinion on it—I think it should be expressed, if there's other thinking.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman. I come from a county where there's a great deal of irrigation. However, we are dryland wheat ranchers. But I know this is of great interest to our area, and so I took this to Judge Lessley and to several others within the valley, and they all feel it is a workable plan. Later, when we get into—a little further into our articles, I may have a slight amendment. But, however, I feel it protects the appropriated and adjudicated water rights that our district is so interested in. Thank you.

CHAIRMAN GRAYBILL: Very well. The question arises on the motion of Mr. Murray that when this committee does arise and report, after having under consideration subsection 1 of Section 3, that it recommend the same do pass. All in favor, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Please read subsection 2, Mr. Clerk.

CLERK SMITH: "Subsection 2. The use of all water now appropriated or that may hereafter be appropriated for sale, rental, distribution, or other beneficial use and the right-of-way over the lands of others for all ditches, drains, flumes, canals, aqueducts, necessarily used in connection therewith, as well as the sites for the reservoirs necessary for collecting and storing the same, shall be held to be a public use." Subsection 2, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 3, subsection 2, of Proposal Number 6, it recommend the same be adopted.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman. I would like to briefly remind the Convention that this is verbatim, word for word, from our present Constitution. The committee takes no pride in the style and drafting of this, but we felt it very important to preserve 80 years or more of water law litigation, that it be retained in its exact language.

CHAIRMAN GRAYBILL: Very well. Members of the committee, you have before you on the motion of Mr. Murray that when this committee does arise and report, after having had under consideration subsection 2 of Section 3, that it recommend the same be adopted. So many as shall be in favor of that, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it; it's adopted. Please read subsection 3.

CLERK SMITH: "Subsection 3. All surface, underground, flood, and atmospheric waters within the boundaries of the State of Montana are declared to be the property of the state for the use of its people and subject to appropriation for beneficial uses as provided by law." Subsection 3 of Section 3, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 3, subsection 3, of Proposal Number 6, it recommend the same be adopted.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, may I ask Mr. McNeil a question?

CHAIRMAN GRAYBILL: Mr. McNeil, will you yield?

DELEGATE McNEIL: I yield.

DELEGATE ARONOW: Mr. McNeil, was there any intent by your committee or of the drafters of this article—subsection 3 to provide for access over private lands to the general public in order to get to streams or reservoirs or waters?

DELEGATE McNEIL: Absolutely not. Mr. Aronow, if I may expand on that a bit further. A delegate proposal, which was introduced by Delegate Berthelson, did specifically contain such a provision which provided recreational access to the high-water mark. The committee deleted that.

DELEGATE ARONOW: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: I move to amend, on page 9, line 17 and into line 18, the words "for the use of its people and".

CHAIRMAN GRAYBILL: Are you deleting that?

DELEGATE ARONOW: Yes, those words, so that the subsection will read: "Waters within the boundaries of the State of Montana are declared to be the property of the state and subject to appropriation for beneficial uses as provided by law." And—Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: I received a great many letters and some long-distance phone calls on this matter from ranchers along the mountain front in my district, who were extremely fearful of this provision. One rancher told me that they have some friends in Oklahoma—the State of Oklahoma has a provision similar to this; I have not looked it up—but these ranchers told my friends that because of this, the public runs over their ranches to get to a river or stream, leave gates open, kill purebred cattle, drive the cattle away from the water when they come to drink; and when the ranchers remonstrate with the public, the reply to them is that the water belongs to the people and therefore they can't be kept away from it. I feel that ranching is one of the great industries of the State of Montana. It's part of the agricultural picture, and I know that these ranchers are having a difficult enough time with economics, without having their hay meadows ruined, without having their cattle run around so that they lose weight, having some of their livestock killed by trespassers, and also having their livestock get out by people who will not close gates. These ranchers down in Oklahoma had to build cattle passes—three cattle passes at their own expense because of the gate problem. And I think by eliminating these words, we will cause no problem. Now, I understand also that the State of Colorado merely states that unappropriated waters belong to the state, and they leave out the words "to the people of the state". And I ask your support for this amendment, as a large segment of the people, the cattle ranchers in Montana, desire it.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: I concur in Delegate Aronow's proposal. The State of Wyoming has what is considered to be the model water clause in their Constitution, and they simply say, water is state property. "The water of all natural streams, springs, lakes or other collections of water within the boundaries of the state are hereby declared the property of the state, period."

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman. I would accede to that amendment. And the source of that language we considered carefully—Wyoming's Constitution, which said the water belongs to the state. We carefully considered Colorado's, which has been upheld by the U.S. Supreme Court, and it said the water belongs to the people. We had four delegate proposals introduced—two of them said it belonged to the state, two said it belonged to the people. So, I said it belonged to the state for the use of the people. But I think it doesn't, in any way, change the intent or the meaning of the section, which is to establish the ownership of the water so that the state will have standing to claim the water in litigation with the other states or with the U.S. government. So I think the—if this would clarify the apprehension of some of the water users, why, I think it's a good amendment.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President, will Mr. Aronow yield to a question?

CHAIRMAN GRAYBILL: Mr. Aronow?

DELEGATE ARONOW: I yield, Mr. Chairman.

DELEGATE BLAYLOCK: Cedor, all the reasons that you give for taking this out, I am in sympathy with. But on the other hand, I also have a worry about our people in our towns here in Montana—Billings, Great Falls, all the other towns—who may want to get to our water for recreation but are precluded from doing so because wealthy Californians and wealthy Easterners have come in here and bought up huge chunks of our Montana land along our rivers and then say to our citizens, "You can't use it." Now, do you have any solution to that problem?

DELEGATE ARONOW: Mr. Blaylock, the people that called me are second- and third-generation ranchers and Montanans. There weren't any Californians or Johnny-come-latelies. I think that there is some provision—well, no, there isn't. The Fish and Game Department is—does have a program, as I understand, to buy up land for access to rivers and fishing grounds. I am also sympathetic, but I have found no rancher that I have gone to and talked to—where I wanted to go on his land to fish—that I didn't ask him if I couldn't go to fish or hunt or whatever, that didn't give me access. And he told me—if he had some bull pasture, he told me where it was; and I always assured him that I wouldn't dump any beer cans or pop cans, or what-have-you or strew any lunch around on his land or do any damage or drive my car or vehicle over his hay meadows. And I think if we all deported ourselves in that fashion and style, there wouldn't be any problem.

CHAIRMAN GRAYBILL: Mr. Aronow, I wonder if you'd yield to one question from the Chair.

DELEGATE ARONOW: Yes, Mr. President.

CHAIRMAN GRAYBILL: Do I understand it to be the sense of your remarks, which are, of course, in the record here, that a rancher could fence a fishing stream or river, so that I couldn't fish or boat or go up and down that river?

DELEGATE ARONOW: No, that is not the sense of my remarks. My—you can go up and down that stream all you want to. But the only thing is, you can't drive across the rancher's lands willy-nilly in order to get to it. You can go along the county roads or wherever there's access. And you certainly may boat. You may hike up and down that stream.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, I think this is probably a good time to tell the delegates why I had printed and spread on their desks this sheet of paper which went out just as we started discussing the water bill. That—

CHAIRMAN GRAYBILL: Mr. Gysler, could you supply the Chair with one?

DELEGATE GYSLER: Certainly. The dark line on there, starting up in North Dakota, as you will recognize, is the Missouri River, which comes from this state. As it comes down, you will find that on the border of South Dakota and Nebraska, there are some—those impoundments that go to the west—there are dams. Now, this is one thing that your committee is very concerned about and has taken a lot of time on this article to try to figure out how we can assure that when this moratorium goes off in 1978, that we can keep as much water for the people of Montana for posterity as we possibly can. And, I'll be brief, but, very basically, inside of this book—and what the plans are. There are approximately 53 million acres of land in the High Plains area between the hundredth and hundred and fifth meridians reasonably adaptable to irrigation—12,000—or 12 million in Nebraska, 12 million in Kansas, about 300,000 in Oklahoma, almost 16 million in Colorado, 133,000 in New Mexico and twelve and a half million in Texas. This is the reason that we tried to write as strong a position in Number 3 here as we possibly could. As Mr. McNeil said, the Constitution of the State of Colorado says that the water belongs to the people; the State of Wyoming's says the water belongs to the state; and this is why we incorporated both of them in there. The Eagle County case in Colorado was one where the Forest Service said, "All water that belongs on a—that comes off the U.S. Forest Service lands here is ours." This is what the Eagle County case was all about. If Colorado had not said that this water belongs to the people, as they did in their Constitution, they would have lost that case, just as the Rock Creek Canal Company in Valley County folded up before the Bureau of Land Management on the case that they had when they delved so deeply into it. So I—before we broke for lunch, I wanted you to take a look at this sheet so you have some idea of at least one of the plans that will be proposed for the use of Montana water when this moratorium ends in 1978.

CHAIRMAN GRAYBILL: Mr. Davis, it's now 12 o'clock, and Mr. Driscoll has asked for the floor for a moment. And then, I think we should recess for lunch.
Mr. Driscoll.

DELEGATE DRISCOLL: Mr. Chairman. I would reserve my point of personal privilege until Mr. Foster is present. He is not present at the present time.

CHAIRMAN GRAYBILL: Very well.
Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, I move that we stand in recess until 1:00 p.m. this day.

CHAIRMAN GRAYBILL: All in favor of the motion to recess until 1:00 p.m., please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: So ordered.

(Convention recessed at 12:02 p.m.—reconvened at 1:13 p.m.)

CHAIRMAN GRAYBILL: The committee will be in session. At the beginning of the recess, we were discussing Section 3, subsection 3, and Mr. Aronow has an amendment before us to strike from lines 8 and 9 on page 4 the words "for the use of its people and", so as to make it read that the water would be—the State of Montana—declared to be the property of the state subject to appropriation for beneficial uses.
Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, I believe I might be able to save the Convention some time on the debate of this subparagraph. Delegate Aronow's comments and Delegate Blaylock's comments both were directed toward access problems, the question of access and trespass. This section does not deal with that question. The section deals with the ownership of the water, subject to appropriation for beneficial uses. It is not the intent and the language does not grant access rights or trespass rights. That specific question was considered in a separate proposal of Delegate Berthelson's; that is, the recreational use to the high-water mark. That proposal has been introduced in the last several Legislatures, is highly controversial, and for that matter and for that reason, it was not included here. So this section deals just with the ownership of the water and not with any access rights.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, during the noon hour I contemplated the effect of my friend Delegate Aronow's amendment to delete "for the use of its people". I was shocked out of several pounds of weight, which I can't afford. I want to discuss it, because it's a subject that's dear to my heart and is of great interest to the people of Ravalli County and Missoula County, thousands of whom use our watercourses in ponds and lakes. I share my friend Aronow's friends' feeling about the dangers of livestock. There are people who will shoot and kill livestock and leave gates open and one thing and another. As a member of the Ravalli County Fish and Wildlife Association for many years, I recall that this problem confronted us and we placed a hundred dollar reward for anyone who would turn in anybody who shot at any livestock, and in about 15 years there has been one case. I know that there are many more, but I think that they are singularly scarce; and I think that we have laws that protect us against such things as much as we can. Anyone who is going to shoot a stockman's critter is going to do it whether we have it in the Constitution or statutes or don't have it. There are that kind of people in this world. Now, at the present time there—stock watering and recreation are not considered as beneficial uses in Montana. That will be remedied—that's one of the good things that this committee has done in this report. It's in the next section, unless it's deleted—and I hope that it won't be deleted. I'd like to see the stockmen have a right to water their stock, and I'd like to see people who wish to fish and boat use our streams. I think that the water is the water of the people. I don't think that you can say that it belongs to the state and doesn't belong to the people. And, my goodness, if the people can't use what belongs to their state, this is a mockery, a travesty. It's something that we should correct. It is an astounding situation when one considers that stockgrowing and recreation are not considered beneficial uses at present. I favor incorporating them under the law. I submit that there are many instances where farmers, landowners, have locked up their land to prohibit people from using—securing access to streams. I know in the Bitterroot Valley there are miles of the Bitterroot River which are unaccessible unless one trespasses. That is the reason why we endeavored to change the law and secure cooperation between the landowner and the Fish and Game Department in providing access strips, so that people could get access to their fishing waters. Now, the fisherman is in a different—and a boater and the water skier and the rest of them who abuse these streams and ponds and lakes are in a different position with respect to the water than some other people. We all concede that the man who has a first, second or third water right have the privilege of using that water in such priority as their rights stand. We all concede that beneficial use of water for domestic and industrial purposes is mandatory because we've got to have drinking water and something, and water to perform our ablutions, and we've got to have water for irrigation on the farms, and things of that character. But the landowner and the sportsman and the person who comes in from outside, lured by extravagant advertising of our remarkable fishing potential or hunting potential, they are lured in here and spend their money for licenses. It's one of the biggest industries we have in the State of Montana, and we're going to slap them down if we do not provide access. I think that we should go farther than that; I think we should see that the fisherman enjoys riparian rights—and maybe that is considered in the next section. Now, if the Montana Power Company or the Dakota-Montana Utility or telephone company or any other utility seeks to go across a stockman's land, whether he has pureblood bulls or poor-blood bulls, it doesn't make much difference. They can go across because they possess eminent domain. They pay, perhaps, a little bit of money to the landowner in order to get their easement, but after they pay for that easement, their maintenance crews can go across in taking care of the line as they please. Now, I think if we prohibit the use of the streams and the water and the lakes and the ponds, if we prohibit the fisherman or the hunter or the camper or the picnicker who wishes to use the banks of those rivers and streams and lakes and ponds, if we prohibit them from using them, we are doing a disservice to the majority of the people of Montana, the vast majority. And I think that they will react in a manner in which we would regret, because their wrath will fall upon all stockmen and all farmers who lock up their lands or who have their lands locked up by virtue of adverse legislation. I think that water is for the use of the people, whether it be stockgrowing, industrial uses, domestic uses, recreation, or what-not; and I point out that there are thousands and thousands of people in Montana and visitors from without the state who come in here annually to use our recreational potential who will be very much upset. I call to your attention a splendid book of which you are all familiar, and I quote from Daniel 5:25, 26 and 27: "Mene, mene, tekel, upharsin", meaning God has marked thy kingdom and finished it; "tekel"—thou art weighed in the balance and found wanting—and I am quite certain that we are going to fit that description and fit that warning if we don't heed a little bit of sound judgment.

DELEGATE SCHILTZ: Mr. Chairman, I would like to ask Mr. Romney a question, but I'm not going to because I already know the answer. I just wanted to show off and say that was the handwriting on the wall, wasn't it?

DELEGATE ROMNEY: You are right.

DELEGATE SCHILTZ: Would the gentleman, Mr. McNeil, respond to a question, please?

DELEGATE McNEIL: I yield.

DELEGATE SCHILTZ: Mr. McNeil, I must read Section 3, which we are now debating, with Section 4; and I would like to ask you if this is about the way this thing is designed. As I understand it, we're reserving all this water to the State of Montana in the interests of keeping some downstream state from claiming a better right to it and that then we say what beneficial uses are and then we provide that the—that anybody who wants to appropriate that water or claim it can file some kind of a claim and thereby establish a first claim to it as against somebody downstream, is that correct?

DELEGATE McNEIL: I don't think I can give you a Yes or No answer to that, Jack. The subparagraph 3 speaks of the ownership. For the benefit of the delegates, the right to use water is a property right. This is independent of who owns the water. The ownership really has no value in terms of being able to use the water. The value we foresee is that, if the state can say it owns the water, at least it can stand in court and in an adjudication with a downstream state or with the federal government and say, "We own it, so therefore we've got a right to talk about it and defend it." But it's still subject—and this doesn't affect in any way, now, the right of an irrigator to use the water. That's the valuable property right, and it can be sold separate from the land or with the land.

DELEGATE SCHILTZ: Will the gentleman yield to another question?

DELEGATE McNEIL: I yield.

DELEGATE SCHILTZ: Well, again I say, I'm considering what action I'm going to take in sub. 3 by what I read in sub. 4, and back—starting with line 16, I see that a diversion can be made—let me see—"a diversion or development work is not required for future acquisition for the foregoing uses." Now, as I read that, it will mean that somebody can go into the courthouse and say, "I appropriate a hundred inches out of Yellowstone River for recreation purposes", and will that then reserve that hundred inches for somebody in—or for the State of Montana and that person?

DELEGATE McNEIL: Mr. Chairman, that is correct except you have to read that next sentence with it. "The Legislature must establish how a water right is to be established without a diversion and may establish priorities."

DELEGATE SCHILTZ: All right. Thank you.

DELEGATE McNEIL: So that you can't pick out any one single part and read it independently, or it just—it won't make sense. And while I'm on my feet, I might say that I failed to say that because subparagraph 3 does not speak to the problem that concerns Delegate Aronow, I would oppose his amendment and support the article as drafted.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, I rise in opposition to Mr. Aronow's amendment for reasons different than what have been expressed by Mr. McNeil. As I understand the water law and the principle of the use of water in Montana, it is this

—that the State of Montana does not actually own the water. The State of Montana owns the water for the use and for the benefit of the people of this state. Now, there's a vast difference. If the State of Montana, as this amendment would then have this provision read—if it owns the water, it can, with impunity, negotiate for its sale. But if the State of Montana is, as I've always understood it to be, a trustee of the water in Montana for the use and benefit of the people, it may not enter into the negotiations and sale of the water of the State of Montana without the consent and approval of its beneficiary, the people. Now, water rights are never owned; nobody owns water. All that you ever acquire is the right to the use of water. And if you'll look at this sentence—at this subsection 3, you will note that the language to be struck is "for the use of its people", and I have objection to that because I think when you add the terminology "for the use of its people", you are reinstating the theory under which water has always been administered in this state and you are also preventing any bargaining of the water of Montana for sale outside. Now, secondly, insofar as this problem of trespass is concerned, the language that we're talking about is not language that has any application whatsoever to trespass, one way or another. And to ease your minds on this, let me tell you that I have had some rather personal and sometimes disagreeable experiences in the Supreme Court on this very problem of access to the public domain. For many, many years it was the unquestioned rule in Montana, and I can even give you the name of the case—Herrin versus Sieben—that gave recognition to what is known as the implied easement theory; and the theory of that was that any man had a right to get to the public domain. And the court said, "We'll recognize that right even to the extent of permitting you to cross private property if necessary to get to that public domain, but we will put this limitation on it. You must go to the owner and you must say to him, 'Mr. A., I want to cross your land to get to the public domain'." And, if Mr. A. says, "You may not cross", then you may say—or, Mr. A. can say one of two things. He can say, "You may cross, and here's the route you will take." He may designate the route. If he says, "You may not cross", then you, under the rule in Montana, have the right to designate your own route to get to the public domain. Now, what are we talking about when we talk about public domain? We're talking, at least, about navigable streams, and, in general, you're talking about the area between the high-water and the low-water mark, which is considered to be, on a navigable stream, public domain. So that, insofar as a fisherman's right is concerned, if you follow the law in Montana as it is today, you have that right if you request it. Even if it's denied, you may still cross. That, at least, is the theory of implied easement as the rule is laid down today in Montana. So that this language which Mr. Aronow would have struck has no relationship whatever to the right to get to the eminent domain—the right to get to the public domain. It does have a great deal to say about the ownership and the character of the ownership of water in Montana, and I urge you not to accept the amendment.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: Mr. President, I have a substitute amendment of three words that I believe will solve our problem. After the word—in line 8 on page 4, after the word "state" insert these three words: "and its people". So the paragraph would read: "All surface, underground, flood, and atmospheric waters within the boundaries of the State of Montana are declared to be the property of the state and its people period". Delete everything else. Thank you.

CHAIRMAN GRAYBILL: Very well, Mrs. Erdmann has proposed an amendment which would put the words "property of the state and its people period." Do you intend to take out the phrase "and subject to appropriation for beneficial use as provided by law"?

DELEGATE ERDMANN: Yes, Mr. President. I don't think it's at all necessary. Beneficial use is paragraph 4, and priority of appropriation is covered very well in Section 5.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, I would resist Mrs. Erdmann's motion there because—and speak for keeping the language as is in Section 3. I think it's important to keep that language, "subject to appropriation for beneficial uses as provided by law", because this will spell out that the Legislature may be able to act in that area in the future. The words that Mr. Aronow wanted to delete—"for the use of its people"—are very important. They were taken out of the Colorado Constitution and have been tested in the U.S. Supreme Court—this is my understanding—and have been very beneficial to the people of the State of Colorado in water battles where the state was arguing with the federal government over water that arose on federal lands. So I would recommend to the committee that we not adopt either one of these amendments and stick to the original language in Section 3—subsection 3.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President, fellow delegates. My Delegate Proposal 127 is the language that appears in Section 3, except for the language "for the use of its people", and that was not left out intentionally. My thinking at the time of the drafting of this was that the state and the people would be synonymous. If it's beneficial to have it in there, I think it's important we leave it in. I very reluctantly argue against Mrs. Erdmann's amendment to strike out "subject to appropriation for beneficial uses as provided by law" because Section 5 really doesn't say that. It says, "priority of appropriation for beneficial use shall give better right". It doesn't say that the Legislature can make the additional beneficial use. I think the sense of this whole article is to protect Montana water, to make a strong statement that we own our water, and protect it for the future use of our state and our people from downstream appropriation. They started using their water a long time before we had our opportunity. It, perhaps, is our greatest resource. We don't deplete it. We have it again and again. So, there's nothing in this article intended to have anything to do with the question of relationship between landowner and fishermen or sportsmen. And I don't think, properly, the Constitution should get involved in that. You really can't, anyway. The deed you have to your ranch lands has certain restrictions and certain easements in it, and anything that's put in this Constitution isn't going to change your existing property rights. The question—this whole thing is not aimed at access or it's not aimed at anything to do except to say, "we in Montana". It's a broad, fundamental concept that this is Montana water, we want to keep it for Montana. And as water gets more scarce—when someone downstream wants to make an appropriation, it may at least give us a leg to stand on to say, "We reserve this to the use of our people as long as it's within our borders." As soon as it leaves the state, of course, it's gone anyway. I don't think we want to get into the recreation access situation in a constitution. It's too—there's no flexibility provided, and it just has no place in here, and it simply would be unworkable. So, I would have to argue against both of my good friends' substitute motions and think the way the language is right now will accomplish the purpose that was intended, if that's what you want to intend in this.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, I think maybe it would help clear a little air if we actually knew what the Colorado Constitution says, so I will read to you from Article XVI, Section 5: "Water streams public property. The water of every natural stream not heretofore appropriated within the State of Colorado is hereby declared to be the property of the public, and the same is dedicated to the use of the people of the state, subject to appropriation as hereinafter provided. Colorado statute section 148-21-2. Declaration of public policy. It is hereby declared to be the policy of the State of Colorado that all waters originating in or flowing into this state, whether found on the surface or underground, have always been and are hereby declared to be the property of the public, dedicated to the use of the people of the state, subject to appropriation and use in accordance with law." I think that the article that our committee came out on this does the best job of anything that I've heard so far, and I very strenuously resist both motions to amend.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: Mr. Chairman, I'm convinced. I will withdraw my motion.

CHAIRMAN GRAYBILL: Very well, Mrs. Erdmann's motion is withdrawn. Mr.—All right, the issue—

Oh, Mr. Conover.

DELEGATE CONOVER: Mr. Chairman, I rise in support of the original proposal. I—in sympathy with Mr. Aronow, I have had the problem that he's been talking about. And I want to say to you, I have never refused any fisherman or hunter on my land. But I want to say to you that up until this year, for the past, maybe 10 or 15 years, I have lost from two to five critters a year. But I still stood my ground and I figured maybe someday that the hunters would respect me and so would the fishermen. And I went through a lot when we had fishing there. They left my gates open, they tore my fences down; and I still never got mad at them. So, I don't think that we can put in the Constitution to regulate our hunters and our fishermen, because I think that's going to have to be done between the people and the hunters and the landowners themselves, and just like I say, it only takes one apple—bad apple—to ruin a whole good box. Thank you.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President, perhaps I could offer something that might put this body at ease and satisfy Mr. Aronow and everyone concerned. If we could add onto Section 3: "This subsection is not intended to authorize trespass over private property except as provided by law." Mr. Chairman, I think this would probably resolve some of the fears that these ranchers have in respect to this subsection 3. I respectfully move its adoption.

CHAIRMAN GRAYBILL: Very well, you're proposing an amendment to—let's see, just a minute now—that would have to be a substitute motion. Now, is your substitute motion going to be in place of Mr. Aronow's and leave the section as is and add this phrase: "This subsection is not intended"—is that what you said?

DELEGATE WILSON: "This subsection is not intended to authorize trespass over private property except as provided by law."

CHAIRMAN GRAYBILL: All right, that will be a substitute motion by Mr. Wilson, which would be added at line 10, page 4. To add the language: "This subsection is not intended to authorize trespass over private property except as provided by law." Mr. Aronow—or, wait a minute—Mr. Wilson, do you want to speak on that any more?

DELEGATE WILSON: I think enough has been said, and I think that this perhaps will resolve the differences that has arisen here.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, I think Mr. Wilson has found a solution for the problem which I have and it will serve the purpose very well, and I recommend the passage of Mr. Wilson's substitute motion.

CHAIRMAN GRAYBILL: Mr. Toole was up first.

DELEGATE TOOLE: I'm just curious. How can the Legislature authorize a trespass? I'm not an attorney; perhaps this is a style and drafting problem—is it? Well, how can the Legislature authorize a trespass?

CHAIRMAN GRAYBILL: Mr. Toole's parenthetical question has been asked. And, Mr. Schiltz, do you want to answer it?

DELEGATE SCHILTZ: We'll take a shot at it in Style and Drafting, but I think Mr. Toole is absolutely right.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: I oppose the amendment. I think the committee's got the sense of what we're trying to do—is make a strong statement of Montana water belongs to Montana and its people. It has nothing to do with trespass. There's no such a thing as trespass authorized by law, and I think we defeat the sense of it, and I oppose Mr. Wilson's amendment.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. Wilson's substitute motion that the subsection 3 be left intact and the following sentence added onto it: "This subsection is not intended to authorize trespass over private property except as provided by law." So many as shall be in favor of that substitute motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it, and it's dead. Now, we're back on Mr. Aronow's motion. Mr. Aronow's motion is to strike the words "for the use of its people." Is there further discussion? (No response) Very well, the issue arises on Mr. Aronow's motion to amend subsection 3 by striking the words "for the use of its people", so the sentence reads: "All surface, underground, flood, and atmospheric waters within the boundaries of the State of Montana are declared to be the property of the state, subject to appropriation for beneficial uses as provided by law." So many as shall be in favor of Mr. Aronow's amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: Mr. Aronow's amendment fails. We're back on the principal Section 3. Is there further discussion or amendment? Mr. Mahoney.

DELEGATE MAHONEY: Might Mr. McNeil—would he ask—answer a question for me, please?

DELEGATE McNEIL: I yield.

DELEGATE MAHONEY: Here on line 6 you say, "All surface, underground, flood and atmospheric water within the boundaries of the State of Montana are declared to be the property of the state." Now, what are you going to do if somebody wants to drill a well? Is he going to have to get the permission from the State of Montana to drill a well on his own land?

DELEGATE McNEIL: Absolutely not, Charley. That has—this statement of ownership, as explained by Mr. Berg and myself, has nothing to do with the right to use it. Even though the state owns it, it is still subject to appropriation as provided by law. You can drill your well and file your water rights, and you've appropriated the water.

DELEGATE MAHONEY: Mr. President.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Last session of the Legislature, this thing was tried in the Legislature to get just this kind of a thing so that everything would be handled out of Helena. You couldn't get a—drill a well unless you got permission from Helena—and this was killed in the last session of the Legislature. Now, are we coming in here at this session and trying to do the very thing that was killed in the last session of the Legislature? This is what I'd like to know.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, this section does not speak to that question at all. Subparagraph 6 does, and it retains our present system of water right control at the local level, which is established by the Legislature. But subparagraph 3, that we're talking about now, speaks of the ownership and not centralized control, which I think is your concern.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Just a short comment that I think has not been mentioned. I sat in on—as a spectator on the committee as they discussed this problem, and it came out at that time that in 1978 the federal government has plans to appropriate all water in Montana to federal ownership. And I believe, as I recall, the conversation was that this wording would forestall that effort by the federal government. Now, it is my understanding—at the present time, the federal government has laid claim to all water that drains into the Canyon Ferry Dam, and ranchers who do any diversion now are expected to pay Uncle Sam for the water that they are diverting. The consideration, I think, that lies behind this subsection 3 is that in North Dakota there is now a very large irrigation project. I think it encompasses something like 500,000 acres, and I believe their eventual plan over there is something in the 5- to 8-million acre range. Those people are going to have to look to Montana water if they're going to get that land wet over there, and it is this thinking or this recognition that the federal government has in mind when they say, "In 1978 we are going to appropriate all unappropriated water in Montana." So if the state, through this wording, can lay claim in the name of the people to this water and if we can fight the legal action by the United States government for a period of 10, 15, 20 or 50 years, it will give the people of our state more opportunity to develop the use of this water and establish a just and legitimate claim. Because that, really, in the eyes of the federal government, now is the only way that you can actually claim water out of a running stream.

CHAIRMAN GRAYBILL: Mr. Berg, are you up?

DELEGATE BERG: Yes, I am. Mr. Chairman, I should like to comment on the safety of the water rights in Montana, particularly if they are clearly enunciated in the Constitution. And I want to refer you to Article IV, Section 1, of the United States Constitution, which says, first sentence: "Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state." Now, this is the section upon which we will rely for the protection of our water rights against federal interference.

CHAIRMAN GRAYBILL: Very well, the question arises on the issue of subsection 3 of Section 3 of the Natural Resources Report. I've forgotten who moved it.

UNIDENTIFIED DELEGATE: Mr. Murray.

CHAIRMAN GRAYBILL: Mr. Murray.

Members of the committee, you have before you for your consideration subsection 3 of Section 3, upon the motion of Mr. Murray that when this committee does rise and report, after having had under its consideration, that it recommend the same do pass. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: Will the clerk please read subsection 4.

CLERK SMITH: "Subsection 4. Beneficial uses include but are not limited to domestic, municipal, agriculture, stockwatering, industry, recreation, scenic waterways, and habitat for wildlife, and all other uses presently recognized by the law, together with future beneficial uses as determined by the Legislature or courts of Montana. A diversion or development work is not required for future acquisition of a water right for the foregoing uses. The Legislature shall determine the method of establishing those future water rights which do not require a diversion and may designate priorities for those future rights if necessary." Subsection 4 of Section 3, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, this subsection is the real heart of the proposed change to the water rights. For the benefit of those who may not be familiar with Montana water law, presently there must be a beneficial use; contrary to what Delegate Romney said, stock watering presently is a beneficial use. However, in order to obtain a valid water right, there must be a diversion of the water from its natural stream. This section is intended to change that, and I urge you to recall that in subparagraph 1 we've protected all existing rights, so this applies only to future appropriations and only to waters that are not now subject to a valid water right. It is intended to permit recreation, as well as stock watering, to acquire a water right without the necessity of digging a parallel channel and making a diversion. To insure that recreation does not, the day after this might be passed, immediately file upon all the water in the state and foreclose future industrial or agricultural development, we have provided that the Legislature shall determine the method of establishing rights which don't require a diversion and, further, indicate that the Legislature may designate priorities if they determine that to be necessary. The purpose for that is to now permit Montana to claim a use for all of its water that's presently flowing out of the state. Yet, at the same time, leave it up to the Legislature so that they can devise some system, stream by stream or river by river, so that future development of agriculture and industry will not be foreclosed by this recreational right. To those who are concerned that to permit this will foreclose future development, I draw your attention to this water resource plan which Delegate Gysler had photocopied and put onto your desks. The minute this kind of a plan ripens into reality, a downstream state or the federal government will be entitled to claim any water which is not now subject to a water right in Montana. And I submit to those who are concerned that recreation is going to be a stumbling block to your agricultural or industrial development in the future, that you are going to have a better chance arguing with the Legislature of Montana than you will going down to Austin, Texas, and fighting 20 million Texans. We have provided that the Legislature can protect and can establish priorities if necessary, and we submit that this is in the best interests of the people of Montana. In our committee hearings we had witnesses testifying representing farmers unions, water companies. They all conceded that we must recognize recreation. There is concern as to how to do it. We have left the details of that to the Legislature so that recreation and the traditional water users can live together for our future water rights. Thank you.

CHAIRMAN GRAYBILL: Mr. Etchart. Let's see—wait a minute—Mr. Wilson. You're second, Mr. Etchart.
Mr. Wilson.

DELEGATE WILSON: Mr. President.

CHAIRMAN GRAYBILL: Do you want us to read your amendment?

DELEGATE WILSON: Please.

CHAIRMAN GRAYBILL: Very well, will the clerk please read the amendment.

CLERK HANSON: "Mr. Chairman. I move to amend Section 3, subsection 4, page 4, of the Natural Resources Report Number 6 as follows: At line 18, page 4, substitute the word 'may' for the word 'shall'; and further amend at line 20, page 4, add the word 'use' between the words 'designate' and 'priorities'; and further amend at line 21, page 4, by adding the following sentence after the word and punctuation necessary: 'Those rights which may be established without a diversion shall be wholly or in part junior in right to those appropriations for which a diversion is made, regardless of the date of the appropriation.' Signed: Wilson."

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President, I think perhaps it would be appropriate to add after "diversion", "or development".

CHAIRMAN GRAYBILL: What was that, now?

DELEGATE WILSON: After the word "diversion", simply add on "or development".

CHAIRMAN GRAYBILL: "Those rights which may be established without a diversion or development"?

DELEGATE WILSON: Right.

CHAIRMAN GRAYBILL: That's on the printed material that Mr. Wilson has had passed around. The first line of the bottom four lines, add the word "or development"; then it reads: "Those rights which may be established without a diversion or development".
Mr. Wilson.

DELEGATE WILSON: Mr. President. Appropriations for recreation, scenic wildlife uses require no investment, so they could promptly cover all unappropriated water in the state. The appropriations for economic uses, which require planning and investment, would then be permanently stopped. This would leave Montana water in the streams for use in downstream states. We believe that recreation, scenic, wildlife appropriations should be wholly or in part junior in right to domestic, municipal, agricultural, stock water and industrial appropriations. Mr. President, I move the adoption of this amendment.

CHAIRMAN GRAYBILL: Very well, is there discussion on Mr. Wilson's amendment?
Mr. Gysler.

DELEGATE GYSLER: Would Mr. Wilson yield to a question?

CHAIRMAN GRAYBILL: Mr. Wilson, will you yield?

DELEGATE WILSON: I yield.

DELEGATE GYSLER: Mr. Wilson, we haven't really gotten together as a committee to discuss this because of time, but basically what you're saying is, I think, more or less the feeling of the committee, so there's probably not too much objection. But I think that the first "shall" that you struck and made "may"—it would seem to me as though that should be a directive and not a prerogative, and I think probably the majority of the committee would feel that way; that the Legislature should go ahead and do this and prevent future haggling that might arise over these things. So would you consent to changing that word back to "shall", like it was, because we figured it should get done.

DELEGATE WILSON: Mr. Gysler, I wouldn't have to much objection. I spent all one day in court trying to determine what the difference was between "may" and "shall", and the court determined that they both meant the same thing.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, I have a substitute motion, if the clerk will read it, please.

CLERK HANSON: "Mr. Chairman. I move to amend Section 3, subsection 4, page 4, lines 11 through 21, inclusive thereof of the Natural Resources and Agriculture Committee majority proposal by deleting the same in its entirety. Signed: Etchart."

DELEGATE ETCHART: Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, Mr. Etchart has moved, by substitute motion, to delete Section 4.
Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, members of the committee. I have a vested interest or a vital interest in this question I want to disclose to the body. I'm a rancher. I'm greatly dependent on future water development, and I'm a member of the Glasgow Board of Directors of the Glasgow Irrigation District. I am vitally interested in the water rights that are in this section of this article. Last Monday, I was privileged to visit

Dave Drum and Leon Miller's feedlot at Shepherd, Montana, near Billings, where I viewed 35,000 beef cattle in a brand-new, shiny feedlot which has all of its wiring underground and has the latest environmental safeguards imaginable. I feel this sort of development is a wave of the future for the economic development of our state, and a great share—Dave, he's too modest over there—but a great share of the development of this type is dependent upon corn silage and forage production from irrigation developments. If we want economic development in Montana, we must also provide for water development. I move to delete Section—subsection 4 because this material contained therein is statutory and is highly controversial. It has failed enactment by the Legislature the last few sessions, and it would certainly be a millstone around the neck of this new Constitution in the form as it is printed in the committee report. Subsection 3, which we just passed, does all that we actually need to do in writing this Constitution. It provides the legislative machinery to enact the material which is presented in subsection 4. Subsection 4 is legislative in content. It contains highly controversial proposals which have failed the test at the last few Legislative Assemblies, as I mentioned before. This has no place in the basic document we are writing for the State of Montana. Consider what the State of North Dakota has proposed in its new Constitution. Just 24 words is all they needed. The language that North Dakota is proposing reads as follows: "All surface and subsurface water shall remain forever the property of the people and subject to appropriation for beneficial uses as provided by law." Simply stated, North Dakota reserves all their water for the use of their people and as the Legislature decides by law. This is flexible, as our subsection 3 is flexible. It will meet the needs of the future water developments of the state, and yet it will protect the water of the state for the people of Montana and for our children and grandchildren. Compare that with the legal pitfalls proposed in subsection 4. Subsection 4 makes recreation, scenic waterways and habitat for wildlife a beneficial use of Montana water. It further provides, in line 16 and 17, a diversion or development work is not required for future acquisition of a water right for the foregoing use. In addition, Section 5 provides for priority of appropriation. This means all beneficial uses are thus in competition to lay claim to Montana's water. The users other than recreation, scenic waterways and habitat for wildlife, who are, incidentally, the future water developers in the state, are at an immediate disadvantage, because any of their uses require the expenditure of considerable sums of money and it would take a great many years for these things to happen. Development takes time, and it takes money. Now, how much time and money does it take to appropriate all the unappropriated waters in the state for recreation, scenic waterways and habitat for wildlife? Since the water does not have to be impounded or diverted, there would be no cost to the Fish and Game people except the legal cost of filing on the water. This would guarantee that the Fish and Game would be able to beat most other potential water users and developers to the unappropriated water in our state. I had a telegram spread on your desks; I think if you will look—about a day ago—you can find it. This telegram is from Mr. Harold Aldrich, who is Regional Director of the Bureau of Reclamation. He covers about a four-state area—and, incidentally, he's in command over in North Dakota, where a lot of our water is going, and is planning the developments that Mr. Drum mentioned. But I would call your attention to his analysis of this water article as it refers to subsection 4. He says, "I believe subsection 4 of Section 3, in its present form, should be omitted because it will halt future economic development in Montana. Under Section 3, subsection 4, appropriations for recreation, scenic, wildlife uses require no investment, so they could promptly cover all unappropriated water in the state. Appropriations for economic uses, which require planning and investment, would then be permanently stopped. This would leave Montana water in the streams for use in downstream states, thus stopping development." Members of the committee, I feel that we should delete subsection 4. I feel that this is statutory, that—something the Legislature should do, and I ask you to support in this.

DELEGATE McNEIL: Mr. Chairman. I, of course, rise to oppose Delegate Etchart's motion to delete. I agree with him that it is legislative and statutory in nature, but I submit, so is everything else in this Constitution that goes beyond the Ten Commandments. It has been put in here because the Legislature of Montana has refused to act. They have refused to recognize the interest of recreation in our waters. The—I submit that this is an ostrich approach to the problem—or refusal to approach the problem—and as a result of the nonaction of the Legislature, substantial quantities of Montana water are leaving this state every day, and our own law does not provide any claim by anybody to that water. Mark referred to the fact that there is no economic expense necessary to appropriate water for recreation. I submit that there will be no economic expenditure necessary for a downstream state or the United States government to claim this same water that's departing the state. If we are to save the water for the state, we must provide that we have a valid claim to the use of the water or we'll lose it. I strongly oppose the motion to delete. I also would like to mention that the telegram to which Delegate Etchart referred contained another paragraph: "If it is to be retained, believe we should stipulate that recreation, scenic, wildlife appropriations should be wholly or in part junior in right to other rights." I trust that you will recognize that language in Delegate Wilson's proposed amendment.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I'd like to ask Mr. McNeil a question.

CHAIRMAN GRAYBILL: Mr. McNeil, will you yield?

DELEGATE McNEIL: I yield.

DELEGATE RYGG: Mr. McNeil, first of all I want to say I know nothing about water rights, but I had a phone call yesterday regarding this particular section. And the man's question went something like this—that "Right now", he said, "I understand that anyone who wants to put in an appropriation for water for something, for whether it be fishing or recreation of some kind, could do so. Then, if this man later on wanted to buy that land or rent that land and wanted to use it for irrigation purposes, then he could not." Is that correct?

DELEGATE McNEIL: No, that is not correct unless the Legislature would so provide. Now, the way the majority proposal is drafted, the Legislature must determine the method of establishing a water right without a diversion and may establish priorities. So, the question you've posed me, I suppose, would be true if the Legislature would say—and I doubt that they would do this—but if they would say a fisherman could file a water right in Farmer Brown's field and have a prior right. If they would, if the Legislature enacted such a provision, I suppose that question would have to be answered Yes; but it's up to the Legislature, and I can't believe that they would ever go that far.

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: Would Mr. McNeil yield to a question, please, Mr. Chairman?

CHAIRMAN GRAYBILL: Mr. McNeil?

DELEGATE McNEIL: I yield.

DELEGATE NUTTING: Mr. McNeil, is it your opinion—the committee researched this considerably—is it your opinion that if we do not have actual filings on these, on the water of Montana, that we could lose it to downstream interests? We must have actual individual filings?

DELEGATE McNEIL: Mr. Chairman. Absolutely, and that's the real heart of this, Dick. Right now, our own law—our Constitution and our statutory law and our own case law does not anywhere provide that recreation, except with the blue-ribbon trout stream bill, which applies just to a few blue-ribbon trout streams—with that single exception, we have no claim of any kind to the water that's flowing out the Missouri River, for example. In litigation or negotiations with the downstream states or the federal government—if I were representing the federal government, I would quite simply say, "I'm going to take all the water that's leaving the state; drain it dry", and you, representing the State of Montana, could not even say, "But look at our law." We're at least claiming it ourselves. We don't have anything right now that even says we have a right to use it. I should go one step further in explaining that. Now, by subparagraph 3 we have provided the state has ownership for the use of the people, but in litigation or negotiation with a downstream state, the federal court would look not only to the ownership but also to the use, and say, "If you're not"—"Even though you're claiming you own it, if you're not using it, it's subject to appropriation", and we could lose it.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Will Mr.—Mr. President, will Mr. McNeil yield to a question?

CHAIRMAN GRAYBILL: Mr. McNeil?

DELEGATE McNEIL: I yield.

DELEGATE DAVIS: In this section, Mr. McNeil, assume that you—it would pass and that you would declare all the unappropriated water now appropriated for scenic, wildlife, recreational and habitat, so forth, what then will prevent it from going on out through the state? I mean, I don't follow your argument that this will prevent it from running downstream to the neighboring state. Are you going to impound it?

DELEGATE McNEIL: Mr. Chairman, nothing would prevent it from running on out of the state. Water is going to flow that way anyway. The point is that if a downstream state makes an appropriation, they can then drain it dry, they can divert it, they can do anything they want with it, and they would have a prior right. They would have the absolute right to pick it up and take it away.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: Mr. Chairman, I rise in opposition to Mr. Etchart's motion to delete. At first I thought that this section on beneficial uses was unnecessary, but as I sit here, I realize the main point is rivalry now between states for this water that originates here. And if all of the water that is not appropriated they can file for downstream—we are a state with a very sparse population, and so it's going to be hard to project ahead very accurately our industrial or irrigation needs—but certainly if we throw in here the area of recreation uses, we are going to be able to document and prove need for a greater sum of water when we all get together at the end of that moratorium. And I would hate to see us not have this area of recreational use that we could document, so I support the paragraph as drafted by the committee. But I think it's very important to add Archie Wilson's paragraph.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: I rise in support of the majority proposal. I am in complete concurrence with Mr. McNeil today, and I would like to say that when I attended water meetings in 1965 before this moratorium was imposed, I attended meetings at which representatives of California and Arizona and New Mexico looked to this area and looked to it, I think, justifiably, because they are going to be in big trouble. I have—I attended a meeting in Salt Lake and they talked about desalting and they talked about weather modification. They are searching every area for water, but the obvious way to go is to divert water from the Columbia Basin, from the Missouri Basin to these dry areas. Now, I have before me the most recent study. Now, this Colorado River Basins Act included many factors besides this moratorium that Scoop Jackson had imposed that expires September 30th, 1978; it also had the factor that an inventory must be conducted in the 11 states involved. Now, we've reached the point in Montana where this inventory will be complete by late '72, possibly early '73. Now, after all the water in the state is inventoried and classified, we start estimating our needs. According to the current law, here is what we have. We estimate our population, which we all know is not very high, and our per capita water needs. Next we estimate our industrial water requirements, and that means we try to provide for future industrial growth. That's difficult to estimate, we know. Then we determine our agricultural productivity and irrigation potential. Then we evaluate the water project sites, costs and benefits. Then there's the projection of the state's overall water requirements, the adequacy of supply, and suggested actions to augment supply and solve problems. I talked to experts in this field and they say that when all these are taken care of, that we really will not have justifiable reason for keeping water in this state other than in those areas unless we have recreation stipulated as a beneficial use. And I have here in my hand the projected progress report for the Western U.S. Water Plan. Now, this is the important one, because this projects to the year 2020. And even though this moratorium exists, the studies—the reconnaissance studies are going on, and already plans are being made on how this water can economically and feasibly be diverted to the dry Southwest. And it will be economical and it will be feasible and they will do it; and I think we have to have recreation as a beneficial use. I've heard people say, "Well, why not treat water as a commodity like oil? Why not sell it?" We can become rich this way. But, if we sell it, then they have right in the future. Maybe we won't need it for a few years. They'll have the right, in the future, to this water which we sell. And then if we develop the right, that's it. When I attended these meetings years ago, I'd hear people in the drier—in the areas of the Southwest say, "Well, it doesn't make sense. We need the water and you don't." Yet the representatives from Washington and Oregon and Montana would say, "Well, we have the water here. Why not come to us where the water is, rather than have the water diverted down there?" It just doesn't make sense not to take advantage of this beautiful resource and to establish recreation as a beneficial use. I completely support you today, Mr. McNeil, and your majority report.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Mr. President, I would like to ask Mr. McNeil if he'd answer a question.

DELEGATE McNEIL: I yield.

DELEGATE STUDER: Under Section 3, under the wording "use of its people", could not recreation and wildlife get an appropriation for water?

DELEGATE McNEIL: If the Legislature so provided, yes.

DELEGATE STUDER: That's all. Mr. President.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: I have wires from three ditch company officers and phone calls from a fourth, asking that this Section 4 should be deleted as dangerous and unnecessary. Now, these ditch companies represent probably hundreds of people and many ranchers in the vicinity of Yellowstone, Big Horn Counties, Custer County there, so I would heartily support Etchart's amendment.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. Chairman, if I may, I would like to take a trip to North Dakota with Mrs. Reichert. (Laughter) I feel, sometimes, we've been conquered by North Dakota and they really never fired a shot.

CHAIRMAN GRAYBILL: You've got to show the relevance of your proposal—

DELEGATE DRUM: The relevance will emerge, Mr. Chairman.

CHAIRMAN GRAYBILL: —to debate here. (Laughter)

DELEGATE DRUM: It's a genuine relevance, sir. The facts of the matter are these, and let's look at the facts. The people in North Dakota, as they develop their irrigation projects over there, are establishing very valid rights to the water that flows through Montana. Now, this water is always going to flow through Montana at some level and the fish and the game—and I'm a fisherman and I'm a hunter, and I love that fresh, clear water out there. But, as the acres of irrigated land are developed in North Dakota—and we are very slow about it in Montana, but we have as much potential as they have over there—but as they establish rights to that water, from that point on, once they are using all of the water that comes out of Montana on their irrigation projects, we will have no legal right to do anything with that water except go fishing in it, to go boating on it. And it's going to be here, true; but the thing this body should recognize is that—the words of Mr. Aldrich—"You are closing out any further development of irrigated land in the State of Montana." From the point that the North Dakotans—You have a question mark on your face, Mrs. Reichert, and I would like to say this as clearly as I can. Once they claim the water that is running through Montana, at that point, we will never be able to develop a single irrigation project in the State of Montana. Now, to go back to Mr. Etchart's few words of—complimentary words about the cattle-feeding business in Montana, and I would like to spread it out to all of the agricultural potential in Montana and I would even like to go back one step further to the Finance Committee that we have been sitting in, a group of us, trying to come up with a article. We've listened to witness after witness that has said, "We need a bigger piece of the pie. We need more money." And no one, no one talked in terms of making a bigger pie. The solution to most of Montana's problems are to bring agricultural development, some type of beneficial and desirable industrial development, and it will make a better, happier place for all of these people to live. So if we can adopt Mr. Wilson's amendment to this section, I am sure that we will give a junior right to the beneficial uses, such as the sporting, the visual, the boating and that type of use of the water. But we will preserve, because of the previous paragraph, some of the rights we hope to preserve that Montana can lay claim to this water, and as we develop it we can continue to use it here in Montana rather than in North Dakota. And thank you for your attention, Mrs. Reichert.

CHAIRMAN GRAYBILL: Mr. Anderson.

DELEGATE OSCAR ANDERSON: I would like to echo. I live just a few miles away from the North Dakota border, and 11 years ago I made a survey—I think it took us seven days—of the new Garrison Diversion Project they were thinking of at that time. And I spent this whole seven days looking over all the area that they intended to irrigate with water that was flowing out of Montana. Now this Garrison Diversion Project was cut back somewhat because some of the lands couldn't take the water without waterlogging, but it's still a mammoth project, and I want to call attention to the fact that we'd better make sure that we keep this use of this water of Montana to the extent that we're able to do so.

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman. I certainly join in Mr. Wilson's amendment if we are to adopt subsection 4, which, in effect, of course, would give wildlife and recreational uses a junior right over other needs for the water here. The fact—now, we spent a lot of time this morning on the matter of the coal reserves here. We have the last big coal reserves in the United States right in this area, and you can be sure that industry is going to come here. Now, Oak Ridge, Tennessee—I've spent some time there. The only reason that the Atomic Energy Commission developed that plant at that location is because they had, at that time, large reserves of coal and a lot of water. We have tremendously greater resources of both of those than they had in that area, and this morning on the radio, it was—there was some discussion on a news broadcast that I heard that the Atomic Energy Commission is considering developing a large, billion-dollar atomic energy power generating plant somewhere in eastern Montana. It's only talked of, certainly no fully developed plan, but I think that it might come. The uses of water and coal for those things are a natural. We have ample reserves of them, and they certainly should have prior rights over recreational uses. So, I would join Mr. Wilson's comments if we are to adopt Section 4, sub. 4.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, I'd like to try and ask and get answers to a couple of questions. I think Delegate McNeil, if he would yield.

CHAIRMAN GRAYBILL: Mr. McNeil?

DELEGATE McNEIL: Yes, I yield.

DELEGATE FURLONG: My question has reference to the—it would be lines 18, 19, 20 and 21 on page 4. Let's assume, for the purpose of my question, that I live on a stream now and I have some right of diversion and there is existing diversion left; in other words, all of the streamflow has been diverted by prior right. Are you with me so far?

DELEGATE McNEIL: Yes.

DELEGATE FURLONG: Now, under this proposal, then, it is possible that the remainder of the water not at this time appropriated could then be appropriated under this blanket procedure that you have.

DELEGATE McNEIL: Yes, although the way you've phrased that question, there's—that's—there's no change from our present water law. The water that's in your creek now that isn't appropriated, I can appropriate it; if I put it to a beneficial use, I have acquired a valid water right to your unappropriated creek.

DELEGATE FURLONG: Right, but I want to be sure, in my own mind, that it could then be appropriated in its entirety.

DELEGATE McNEIL: Yes.

DELEGATE FURLONG: All right. Now, my second question—may I ask another question?

CHAIRMAN GRAYBILL: Yes.

DELEGATE FURLONG: Mr. McNeil. If, because of that question—you made reference to the telegram—I forget the man's name—Harold Aldrich. You made reference to his suggestion on 3-4 that if the majority proposal is to be retained, that the junior rights should be given to these appropriations. My question is, does the majority—I understood Mr. Gysler to indicate that—but does the majority proposal or does the majority group support Mr. Wilson's proposed amendment, which would, in fact, make it a junior right?

DELEGATE McNEIL: Mr. Chairman. In answering that question, the majority proposal, as drafted, contemplated that the Legislature would do just that. However, we heard testimony from many experts in water law, primarily Professor Stone at the University, and he suggested, don't lock priorities into the Constitution because they may change; in addition, they may be different on one stream than another. They quite certainly would be. As far as Delegate Wilson's proposed amendment is concerned, this is what we contemplated the Legislature would do. I still think that's the proper approach. However, I could live with it and would certainly not oppose it if this will satisfy the ditch companies and the irrigators. We did not—there was no intention that any fish would ever stop development of irrigation. That is not the intent. However, if we ignore recreation, we're going to lose our water. It's that simple. We felt—or the majority felt, in drafting that, that the question of priorities should be left to the Legislature to be applied to each specific stream or water district or so forth; but if there is great concern about this, I think the proposed amendment of Delegate Wilson would assuage the fears of those who think that recreation would foreclose development. And because of the language "shall be wholly or in part junior", I think that would still leave the Legislature enough flexibility as was suggested by one of the ditch companies to permit a minimum streamflow in some areas where they're present. This couldn't, of course, affect any present water rights, but where there are unappropriated waters, I think this would be broad enough language to still permit the Legislature some flexibility. So I would—although I think we should pass the majority report as written, I would not oppose Delegate Wilson's amendment.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. President. I think this is probably one of the most important things that will come before this entire Convention this whole time, is water. And we're sitting around here and quarreling and arguing about our—amongst ourselves, and I want to answer Mr. Etchart in regard to North Dakota. That is a water-importer state, and the Missouri system, 83 percent of the water of the Missouri system comes out of the states of Wyoming and Montana. Montana puts it in through the Yellowstone and a little bit down—it isn't too much—comes out of the Little Missouri. The rest of it comes out of this great State of Montana, east of the Continental Divide. Now, what they're trying to do as fast as possible downstream, both in North Dakota and South Dakota, are trying to lay claim to this water. North Dakota originally; the Garrison Diversion Conservancy District, 250,000 acres of land. Now, down in South Dakota they have a new proposal with a hundred and fifty thousand acres of land, all coming out of this great state; 83 percent of it is coming out of these two states. Now, if we sit here and argue amongst ourselves, we're going to just make it so much better for them. Now, I happen to know personally the man that drew this plan that you're looking at. I know him personally. He's a very good friend of mine. This takes out, in western Nebraska—going to take out of this system clear down below to the great State of New Mexico, and it isn't in Arizona but it's in New Mexico. They are not crossing the Divide in west Texas. When he talked to me about this, I says, "Okay, then, you go out and get the Moapa project, which starts in Alaska, and for every acre-foot of water you take out of the State of Montana, you put one in. This is what I want; I've stood on it a long time. I've been—Arlyne Reichert—I have attended a many of these hearings on water, and to me it's the state secret of this state to—now if we don't lay some claim to this situation, we can stop the coal production in eastern Montana but to one thing, shipping it out on rail. We'll have no way to get—because we won't have water to develop the necessary steam for the cooling that's necessary. I see a great future down there. Now, as soon as the dry years come again, and they will, you're going to find a clamor for irrigation, because, as to—Mr. Drum and Mr. Etchart both stated—feeding of cattle in this state is a new industry, and I certainly would like to keep the dollars here. There's a great asset in keeping that livestock, that steer here until he's a yearling. We'll get taxes off him. We don't get a cent of taxes off of it as a calf if it's shipped out of this great state. Let's go on a little further with this. If we have to come out and have this—these real free-flowing streams, we're going to have them. We have already given the downstream states 9-foot channel from the—from Sioux City down. Great Governor Sam Ford, back in 1944, testified in Washington against the 9-foot channel from downstream there. He says, what you're going to do is taking Montana's water. Now this is the first development was that you took the stream and says you must let this much water downstream. We have an awful time when we go down in eastern Montana when the droughts come. Whenever at Glendive—and I think both Mrs. Cross and Mr. McDonough will recognize—when the rocks started showing in the river, then they've got to slow up irrigation down in the number 2 project on the Yellowstone, and that is the project at Sidney. First call is Huntley; second becomes the other. Now we're finding these people trying to delve in, and I think it's time for us to quit fighting amongst ourselves. Let's unite to save the water for this great state, and I certainly agree that this can work if we can get Mr. Wilson's proposal to come some balance in here. Now, you may not agree with it, but I think it's a problem thing that maybe we can satisfy because all the telegrams I have received has says, "Get rid of Section 4". I want Section 4, and I think possibly the amendment of Mr. Wilson's would make it correct, and I certainly hope substitute motion does not prevail.

CHAIRMAN GRAYBILL: Mrs. Cross.

DELEGATE CROSS: Mr. Chairman, I am rising here mostly in a point of information for myself. I didn't miss very much of the deliberations of our committee, but occasionally I did have to be gone. This term "junior" bothers me. According to the dictionary, it says "lower in standing or rank and inferior or subordinate". I wonder how this affects this claim to water if Montana ever has to go in court with the U.S. federal government. C.B., could you clarify that for me? I'm just not sure what this does if we add this to Section 4.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman. I'm not sure, Louise. I do not know, and I don't have a crystal ball to predict what some federal judge would do. Delegate McDonough just mentioned a—made a—asked me a question that I think goes right to the heart of this. If we put in our own Constitution that recreation is junior, rather than leaving it up to the Legislature for specific waters, that at least a downstream state could claim all right because recreation is junior in your state; our claim for irrigation is senior to your own claim for recreation—and get around our whole purpose here anyway. I would have that concern.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President, I hate to speak on this issue, but it's so important. I would like to speak to the junior right. Assuming that all the water is appropriated for recreation, that means you have to leave it in the stream. We constructed a dam in Beaverhead County, which works for Beaverhead and Madison County, where we appropriated water and stored 200,000 acre-feet, which makes a great recreational area without any concern for access; the people can come and go. We've stabilized the streamflow for miles where the fish used to die. Now, recreation, the water has to stay in the stream. We could not have constructed this dam if recreation had appropriated and say, "We want the water down here for recreation." It would have flown the creek and on out of the state. So if you have a junior right, that means we can still have small watershed storage projects. They store it and release it. It gets back in the stream. Or major storage projects without our state. But if you take the position that your recreation right is equal or superior, if you appropriate all the water in Montana streams that's unappropriated and say "This is recreational water", then we cannot appropriate it upstream subsequently for watershed storage projects which subsequently gets back in and-makes a beautiful recreational situation. That's the thing that concerned my question when I asked Mr. McNeil, "How are you going to keep it from going out of the state?" Incidentally, the Clark Canyon Dam in southwestern Montana would have never been constructed. The Fish and Game Department opposed it. They came to the Legislature and said, "We want to appropriate all the unappropriated water." The only water that's unappropriated is the high water. Their theory was, we'll save the fish from dying when the water is low. Well, all that water is already appropriated, so it's only the high water; and, of course, that high water is all the way, well on its way outside the border of the State of Montana when it's needed when the water is down. So they would not have approved this dam. You would have had to go through them to see whether they approved of it. Now, their philosophy has changed entirely since that time. They've seen the benefit of a stabilized flow of water all summer long downstream. It has made tremendous difference on the fish and wildlife. There's access, there's flow all the way down for many, many miles. And you've got a great deal of recreational thing that would not have come into being if all this water were tied up in a recreational lock-in. That's one reason why I'm not going to object to Section 4 if we can get an amendment, because I realize so many people think that they are the only ones for recreation—it's a new idea in their heart. If you don't vote the way they do, you're a company man and all the other insinuations that have been made on this floor here in the last few days. But there's a lot more to these very important projects and this is one that I speak to at length because it is so important to the water. It's made both recreation and it's made both economy in southwestern Montana very harmonious. It's improved both, and we have a great recreational area there. We wouldn't have had it if the recreationalists had had their way, or the environmentalists that are opposed to dams, at that time. So there's some harmony that you have to strike in these things. It has worked in

Montana and will continue to work. That's why any right, I think, you're going to have to put down; it has to be junior if you want to be able to have upstream projects. That water gets in the stream, fine. It's for recreation and it's always been for recreation and wildlife habitat or anything—as long as it's rolling by there, it's going anyway—if it's a valid appropriation for federal purposes. So I did feel I should put this in the record, because it's that important. It's one of the most important issues in our Convention, I think, when you think of future Montana. Thank you.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Etchart's motion to delete Section 4 in its entirety. And I don't wish to cut off debate, but let's start narrowing it down and hold to it.

Mr. Arbanas, did you wish to speak?

DELEGATE ARBANAS: I'll wait till after this vote.

CHAIRMAN GRAYBILL: Very well. Mrs. Erdmann was next.

DELEGATE ERDMANN: Mr. Chairman, the man who sent the telegram and asked for the deletion of Section 4 is Harold Aldrich of the Bureau of Reclamation, and for the record, I think we should be reminded that the Bureau of Reclamation did not even record a water right filing when they completed their Canyon Ferry project in 1954. And a year or so later, that same bureau claimed all the surplus water above Canyon Ferry Dam as storage in that reservoir. The bureau further stated that any person, from that date, appropriating water in that entire drainage area above Canyon Ferry would hereafter have to pay the bureau for it, as the water had already been consigned as storage in their reservoir. And I want you to think about that when we consider deletion of Section 4.

CHAIRMAN GRAYBILL: Mr. Felt.

DELEGATE FELT: Mr. Chairman, members of the Convention. I think another example of the word "junior" which might have some bearing here would be that junior is the status Montana seems to have often in the federal system of states. And in connection with water, it's the position we could have if we do not maintain the strongest possible position in our Constitution. I would urge support of the provision of the majority report as originally drafted by them.

CHAIRMAN GRAYBILL: Very well, is there—

Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, in view of the fact that nearly all water in Montana, other than floodwater; is already appropriated, most of the water that we'll get hereafter is going to be impounded water. All of the—contrary to what my friend from Dillon said, all of the environmentalists have not always been against dams. I recognize Delegate Harlow over there, who worked hard for Paradise Dam. I did the same thing. I think we're both environmentalists, and I feel that most of the water that we are going to get for recreation is going to be similar to the water that the delegate from Beaverhead County spoke about and the Clark Dam. It's going to be impounded water which releases water all of the time, as it does up in the west fork of the Bitterroot from the Painted Rocks Dam. And I think we've got to have that water, and if we're going to have it, we're going to have to get it from impoundments. And I think recreation is a multiple-use and we enjoy it now and we should accelerate it.

CHAIRMAN GRAYBILL: Mrs. Bates was up; and then you may close, Mr. Etchart.

DELEGATE BATES: Mr. Chairman, fellow delegates. I feel that if—first, I want to say that in noting the—in Section 4 it says, "a diversion or a development work is not required for future acquisition". Now, in Mr. Wilson's amendment, which I feel must go with this section, it mentions the junior right of appropriation for diversion of water. Diversion is taking the water out of the canal. I'm wondering how, for recreation, we are really going to hold this water when it flows by and goes into Dakota or the other states? And how can we get the right to this water and the appropriation? My understanding of water is, you use it or you lose it; and it will take actual diversion, really, to hold it because we may lay claim to it in recreation. How effective this really will be is hard to say [in] the future. Will they really call it our water because we call it recreational water? But when we divert water, we are using it and we are not apt to lose it, and I recommend retaining both the amendment and the section. Thank you.

CHAIRMAN GRAYBILL: Mr. Etchart, you may close.

DELEGATE ETCHART: Mr. Chairman, there seems to be so much interest in the amendment, with your approval, could I withdraw my motion with the privilege of, if the amendment fails, to reinsert it, Mr. Chairman?

CHAIRMAN GRAYBILL: You may withdraw it, and I certainly will be glad to let you have another chance.

DELEGATE ETCHART: I'll withdraw my motion, then.

CHAIRMAN GRAYBILL: All right, the motion is withdrawn then, and the issue—Mr. Etchart's motion is withdrawn, and the issue then becomes on Mr. Wilson's substitute—or Mr. Wilson's amendment. Now, Mr. Wilson's amendment, if you'll take your books and look at page 4 again, on line 18 he would change—the first 10 lines or so are the same—8 lines—and then it says "The Legislature may", instead of "shall", "The Legislature may determine the method of establishing these future water rights which do not require a diversion and may designate use"—he has added the word "use"—"use priorities for these future rights if necessary". And then he adds this sentence: "These rights"—pardon me—"Those rights which may be established without a diversion or development shall be wholly or in part junior in right to those appropriations for which a diversion is made, regardless of the date of the appropriation."

Mr. Hanson.

DELEGATE ROD HANSON: I rise in support of Mr. Wilson's motion. I have a number of telegrams and letters from my area, which has several irrigation projects, and they were in favor of deleting Section 4. However, I feel that Mr. Wilson's motion—or amendment will take care of the objections that they had in such a way that they would go along with that rather than deleting the entire section. So I support Mr. Wilson's motion.

CHAIRMAN GRAYBILL: Mr. Davis, you have an amendment. Do you want to make it now?

DELEGATE DAVIS: Yes, sir. I think it would save a double discussion of it. I would move to substitute motion to the following effect—

CHAIRMAN GRAYBILL: Actually, Mr. Davis, as I understand it, you are adding it to Mr. Wilson's amendment?

DELEGATE DAVIS: No, I want to substitute the language in his for this.

CHAIRMAN GRAYBILL: You're substituting your language for his?

DELEGATE DAVIS: Substitute my language for his.

CHAIRMAN GRAYBILL: Very well, then, it's a substitute motion. Go ahead. Do you want me to read it?

DELEGATE DAVIS: Mr. President. In other words, at the end of this last sentence in Section 4, if necessary, change the period to a comma and put "provided, however, that water rights appropriated for recreation, scenic waterways and habitat for wildlife, without diversion, shall be junior and subordinate in right to other beneficial uses, regardless of the date of appropriation."

CHAIRMAN GRAYBILL: I take it, Mr. Davis, that your purpose is to limit Mr. Wilson's last paragraph to the three cases of recreation, scenic waterways and wildlife habitat. Is that correct?

DELEGATE DAVIS: It's partially correct, Mr. President, and actually the language that he has incorporated in his language, which I agree with the intent and purpose, but he has taken from the telegrams saying we should "wholly or in part"—they should be "junior and wholly or in part". "Junior" doesn't really mean much in a constitution, that I can see; and it was a suggestion in the telegram that we're trying to make constitutional language, and I think we should take a position. If we're going to make them junior, they should be junior. If this body doesn't want them junior, then they shouldn't be. But to adopt the language in the telegram really doesn't accomplish, I think, what Mr. Wilson really wants—or myself, either one.

CHAIRMAN GRAYBILL: All right, now, I think I had better read this slowly enough so you may write it down if you want to see it. Mr. Davis would have a substitute motion. I take it you have no objection to the word "may" and the word "use", so he has the first little changes in line 18 and 20, "may" and "use". But the second part of it, the sentence that begins on line 21 would be: "Provided, however, that water rights appropriated for recreation, scenic waterways and habitat for wildlife without diversion shall be junior and subordinate in right to other beneficial uses, regardless of the date of appropriation." "Provided, however, that water rights appropriated for recreation, scenic waterways and habitat for wildlife without diversion shall be junior and subordinate in right to other beneficial uses, regardless of the date of appropriation." And it has the effect of listing the three types of uses specifically, and it has the effect of doing away with the language "wholly or in part junior". Now, is there discussion?

Mr. Davis.

DELEGATE DAVIS: I'd like, if I could, to put "other beneficial uses" after "uses in the State of Montana"—to get that in.

CHAIRMAN GRAYBILL: In the last line?

DELEGATE DAVIS: Yes, sir.

CHAIRMAN GRAYBILL: All right, it says: "subordinate in right to other beneficial uses in the State of Montana."

DELEGATE DAVIS: Yes, sir. Could I speak to it briefly?

CHAIRMAN GRAYBILL: Yes, you may.

DELEGATE DAVIS: I go along with Mr. Wilson's idea, but where they refer to "without diversion or development work", it's a little uncertain. So I have provided—or attempted to provide language that if we have recreation, scenic waterways or habitat without a diversion—in other words, if you're simply appropriating water and letting it flow down the stream and on out the border—then municipalities, industry, agriculture, anyone else, can still make appropriation for use of that water. It is all going to return to the stream. If you have a right with diversion, if we find a habitat for wildlife, for recreation, where you impound for that specific purpose, you would not have a junior right because you would be retaining the water instead of just letting it go out in its natural flow. That's the intent of this language. It's no attempt to really make a change except to be specific for Mr. Wilson's.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman—and I'm not going to ask Mr. Davis a question because I think I now understand, but I'll ask him to respond if he likes. It seems to me that we're now putting ourselves in the position where, if somebody says "this is a first-class water skiing area" and we now appropriate it for that purpose and are water skiing on it and it develops at some future time that somebody might want to drink that water or use it for irrigation or use it for industry, that it, once having been diverted and appropriated and used for that water skiing purpose, it takes seniority if we reverse the terminology. It takes seniority over what might very possibly be, if not a better right, at least a more important right.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: If that's the way this reads, it certainly is not the intention of it, and I would appreciate any assistance I can get to clarify it. In other words, my concern is, we must—if recreation—if there's a diversion for recreation, it would have a priority. If it's just in the lake or in the river for water skiing and you're not making any impoundment or diversion, then it would be junior to a municipality, say, a city that needs the water, junior to irrigation and junior to other recreational things that were going on. Say you had a recreational thing you wanted to impound and make a lake but you had it appropriated downstream for recreation, it would still be junior where it was not diverted to where you were going to impound it and save it.

CHAIRMAN GRAYBILL: Now, the Chair senses that there is some sentiment for the section as it was originally submitted by the committee, and there is some sentiment for providing a junior status for some rights. And the Chair thinks we ought to get some sense of where we stand on that without, perhaps, giving up the whole section before we recess. I will certainly let you all speak, but I'd like to get a vote on those two issues so we know where we stand before long. Who wants to be next?

Mr. Brown.

DELEGATE BROWN: Mr. President, this matter is a great concern to me because this water is so important. We are now amending from the words of a telegram, we're taking oral amendments. No one, I think, right now is capable of discussing it. It's a technical field and it must be done right and it's no way to write a constitution; and I think it shows how we are getting into legislative matters. So, I'm going to make an unpopular motion that we pass Section 4 until 9:00 a.m. tomorrow morning and let the committee work on this.

CHAIRMAN GRAYBILL: A motion has been made to pass Section 4.
Mr. Kelleher.

DELEGATE KELLEHER: I'd like to amend Mr. Brown's motion to make it till 2:00 p.m. tomorrow, and I'd like to speak to my motion, if I may. Is it possible to speak on a motion to—

CHAIRMAN GRAYBILL: Well—

DELEGATE KELLEHER: I'll be very brief.

CHAIRMAN GRAYBILL: Well, at this point the Chair—

DELEGATE KELLEHER: I'll be brief.

CHAIRMAN GRAYBILL: I don't think you can. I don't know whether the motion to pass is debatable or not. I suppose it is, but the Chair would certainly like to announce that we intend to finish Natural Resources tonight. And if we don't, we're going to work long. And I certainly don't want to pass it until 2:00; but you may certainly make your motion. I hope to have another article half discussed by 2:00 tomorrow.

DELEGATE KELLEHER: The only question that—problem that bothers me, Mr. Chairman, is the question that Mr. McNeil has, and Mr. McDonough. We have 24 lawyers here and nobody can answer this problem about junior rights versus senior rights in the State of North Dakota and downstream users; and I've just called the Field Solicitor's office in Billings, and the Field Solicitor is out. He'll be back in his office tomorrow morning. The Assistant Field Solicitor's office said—officer said that, frankly, he did not have the answer to that question; and I am very, very disturbed about that matter. If we make something junior by our Constitution, then certainly North Dakota and Nebraska and all the other downstream users will be able to use it. That's why I'd like to get an answer to my question, that's all.

CHAIRMAN GRAYBILL: All right. The Chair's point is, we have no idea whether the sense of the body is not to even worry about the junior problem; and if that's the sense of the body, we don't need to wait till 2:00 tomorrow to find out the answer to it. But—so I'd like some motion—but I guess we now have a motion to pass until morning. And did you make a substitute motion to pass until 2:00; is that your point, Mr. Kelleher?

DELEGATE KELLEHER: (Inaudible)

CHAIRMAN GRAYBILL: All right, Mr. Davis, what's your motion? I mean Mr. Brown, excuse me.

DELEGATE BROWN: Since this is not debatable, I will withdraw my motion until you get the sense of the body and then renew it, if that's what you'd prefer.

CHAIRMAN GRAYBILL: I'm not sure that it's not debatable. I think maybe it is debatable.

DELEGATE BROWN: I have no objection to getting the sense of the body. And if they aren't going to adopt Mr. Wilson's amendment, which I'm strongly for, then it would be a waste of time to pass. But if we are going to get something in here that's right, then I'll renew it after you get the sense of the body.

CHAIRMAN GRAYBILL: Right. We haven't had any amendments on—haven't had any votes on this subsection 4.
Mr. Kelleher.

DELEGATE KELLEHER: If Mr. Wilson's amendment does not pass, then I'll withdraw my motion.

CHAIRMAN GRAYBILL: Well, I take it by your phraseology that it's all right to put these motions. The first motion before us is Mr. Davis' motion to substitute his language for Mr. Wilson's language. His language is: "Provided, however, that water rights appropriated for recreational, scenic waterways and habitat for wildlife without diversion shall be junior and subordinate in right to other beneficial uses in the State of Montana, regardless of the date of appropriation.
Mrs. Blend.

DELEGATE BLEND: Mr. Chairman, a point of clarification. On line 18 in Mr. Wilson's original motion, he changed the word "shall" to "may". At one point, if I remember correctly, Mr. Gysler obtained permission from Mr. Wilson to eliminate "may" and go back to "shall", and I notice we've been reading Mr. Wilson's—

CHAIRMAN GRAYBILL: Well, Mr. Gysler did that, but he didn't bother to—I'm not criticizing him, but the Chair was not involved in that; and if somebody wants to amend it, that's fine.

DELEGATE BLEND: It still is "may", not "shall", then?

CHAIRMAN GRAYBILL: Well, Mr. Wilson's amendment is "may", and the language of the committee is "shall".

DELEGATE BLEND: Thank you.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I do some water rights law. I think Mr. Berg does, and I know Mr. Davis does; and I think that if Mr. Berg and Mr. Davis and I and Mr. Wilson went in the Rules Committee room, we could come out of here in 15 minutes with something that would resolve our problems.

CHAIRMAN GRAYBILL: Very well, I think you could, too. Are you suggesting that you do it before we take any votes?

Mr. Berg.

DELEGATE BERG: If the—Mr. Chairman, I should like the delegation to at least know my viewpoint on this. I am very much in favor of seeing recreational rights junior to appropriation rights made by diversion, and I want to assist in writing a provision into this that will accomplish that purpose. Now, you should understand my viewpoint on this before you send us into any committee.

CHAIRMAN GRAYBILL: Very well, the Chair will suggest that we take a 25-minute recess and suggest that anyone interested in this go into the Rules Committee room and try to help write it, and maybe we'll come up with something that you can all accept. Mr.—Now, wait a minute.

Mr. Eskildsen.

DELEGATE ESKILDSEN: I move we recess until 3:30 this day.

CHAIRMAN GRAYBILL: The motion has been made that we recess until 3:30. Is there—all in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, Nay. (No response)

CHAIRMAN GRAYBILL: Very well.

(Convention recessed at 3:05 p.m.—reconvened at 3:43 p.m.)

(Delegate Felt assumes chairmanship of Committee of the Whole)

CHAIRMAN FELT: The committee will please be in order. Before we proceed with the matters that need to be dealt with, I would like to read the following message from the Sergeant-at-Arms: "At the request of several delegates, I have learned that there are a few tickets available for Friday and Saturday, March 9th and 10th, at the tournament in Bozeman. If the delegates would like a ticket, they should see the Sergeant-at-Arms as soon as possible. He will reserve them at the will-call window in Bozeman." In addition to that matter, I'd like, now, to call upon Delegate Scanlin for a brief report.

DELEGATE SCANLIN: Mr. Chairman. In response to the Chair's request for a daily tally, your committee submits this report on yesterday's activity. In one hour of style and drafting, we had a report of the "holy trinity"—Felt, Schiltz and Habedank; unanimous acceptance. The report on Natural Resources: first place goes to Delegate Brown for a 20 minute exegesis of ecological bible; second prize goes to Delegate Cate for a 20-minute impassionate plea. Consolation prize awarded to Delegate Dahood for 12 minutes of organized confusion. (Laughter) Runners-up included McNeil, 12 minutes; Murray, 6; Graybill, 6; Garlington, 4; Berg, 3; Swanberg, 2; Schiltz, 2; Loendorf and McKeon, 1. Arness, Aronow, Brown, Davis, Habedank, Holland, Joyce, Kelleher: "goose eggs" for the day. A special award to Delegate Campbell for 10 minutes of tenacious on-and-off victory for a clean and healthful environment. The committee would take a special privilege in making an honorary degree of M.J.P., which is master of jurisprudence, to Delegate Robinson for rejection of all legal counsel. (Laughter) Signed: Scanlin, Sparks—ad hoc committee. Mr. Chairman, I move that this committee be resolved of any further duty. Thank you. (Laughter)

CHAIRMAN FELT: The question arises on the motion to adopt the committee report. All in favor, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No. The Ayes have it and so ordered. (Laughter) The expense warrants for all delegates are now ready at the Auditor's office. So, now we have taken care of our funnybone and our pocketbook and we'll get to work. The motion before the committee is the motion by Mr. Davis, which is a substitute motion. Behind that, there is an amendment by Mr. Wilson to the main motion, which was to adopt subsection 4 of Section 3. Any questions about the position we're in at the moment?

Mr. Davis.

DELEGATE DAVIS: I believe, Mr. Chairman, that Mr. Wilson's motion was first and that I now stand on my substitute motion.

CHAIRMAN FELT: You stand on it?

DELEGATE DAVIS: Yes, I believe that's before us now.

CHAIRMAN FELT: That's correct. That's what I stated. Your motion is a substitute motion which is the motion before us, but that behind it there was the original main motion and the amendment to that by Mr. Wilson.

Delegate Burkhardt, for what purpose do you arise?

DELEGATE BURKHARDT: To ask a question, Mr. Chairman. I wonder if we are going to hear a report from the committee that met during the recess?

CHAIRMAN FELT: We shall. Mr. Berg, do you wish to make some statement to inform the delegates of what went on in the interim?

DELEGATE BERG: I would prefer that either Mr. Schiltz or Mr. Davis make the report. I do have an amendment to propose to either Mr. Schiltz's or Mr. Wilson's motions.

CHAIRMAN FELT: Mr. Schiltz will be asked to. I might say that, with the condition of things as they are—with the main motion, an amendment to that motion and a substitute motion, a substitute motion now would not be in order. An amendment to the substitute motion of Mr. Davis would be in order, and if you cannot fit your program into that, then we would have to vote on the substitute motion which is before us in order to make room for a fresh substitute motion.

And, so, Mr. Schiltz, would you expound?

DELEGATE SCHILTZ: Mr. Chairman, members of the committee. We and 10 or 12 other people met around the table back here, and I must report we didn't really come up with anything except that each of us now knows the others' position much better and I think we can have a debate that will be enlightening, if nothing else. I had some difficulty with Mr. Davis' explanation of his motion, and he's satisfied me now that that's not so. I think we should proceed on Mr. Davis' motion, either pass it or reject it, then go on to Mr. Wilson's. We're at that point, at least, and I think that some of the confusion about the various positions is resolved.

CHAIRMAN FELT: Am I correct in believing, then, that there is no new language to present and we are going to work with the same language we had before the recess?

DELEGATE SCHILTZ: That is correct.

CHAIRMAN FELT: Well, before we start, and also for the information of the delegates, if we go to—get close to 5:30 and it does not appear that we will be able to finish by 6:00, we would then entertain a motion to recess from 5:30 until 7:30, so you can make dinner plans accordingly. If it appears that we could finish by 6:00, we'll stay here to finish.

Delegate Mrs. Cross.

DELEGATE CROSS: Mr. Chairman, because there was no unanimity of agreement in that Rules Committee room, I am going to support the majority report as it was presented.

CHAIRMAN FELT: Delegate Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, as Vice-chairman of this committee and having sat in and listened to the diversities of opinion, I am going to also support the majority report as printed in our book. And I want to tell you people that I will be the first one to volunteer to come down here and help in the Legislature to get these things to where we all want them; but I still feel that they are legislative, that we can do the best job for the people of the State of Montana by sticking with the majority report, and that's where I'm going to stick.

CHAIRMAN FELT: The gentleman, Mr. Davis, for what purpose do you arise?

DELEGATE DAVIS: Mr. Chairman, I rise for the purpose, at this time—before belaboring this thing at length, I understand there's a motion to delete that wants to be tested, so I will withdraw my motion.

CHAIRMAN FELT: Your substitute motion?

DELEGATE DAVIS: My substitute motion, so that can be floored because we're wasting a lot of time if that passes anyway.

CHAIRMAN FELT: If anyone objects to the withdrawal of a motion which has been presented, it cannot be withdrawn without permission of the whole, by vote of the Convention.

The delegate, Mr. Berg.

DELEGATE BERG: I have an amendment which I want to propose to either Mr. Davis' or to Mr. Wilson's motions, and I want to know what my position is under this proposed withdrawal.

CHAIRMAN FELT: If he withdraws and a motion—a substitute motion is made to delete the entire section and if that motion to delete carried, you would not have any opportunity to make your amendment—

DELEGATE BERG: Very well, I'll—

CHAIRMAN FELT: —to the present motion which is pending.

DELEGATE BERG: Very well, then, I would make the motion at this time. I move that—

CHAIRMAN FELT: The delegate, Mr. Berg.

DELEGATE BERG: —that the substitute motion of Mr. Davis be—

CHAIRMAN FELT: The delegate, Mr. Eskildsen.

DELEGATE ESKILDSEN: Just a moment. Are we—have we—do we have a motion now to delete the whole section?

CHAIRMAN FELT: No, we do not have that motion before us. We have before us a motion by Delegate Davis, and we are about to receive an amendment to that substitute motion.

DELEGATE BERG: I move that the substitute motion of Mr. Davis be amended by including the words "from a flowing stream" between the words "appropriated" and "for recreation".

CHAIRMAN FELT: We'll have the clerk reread—Oh, do you have it in writing, Mr. Berg?

DELEGATE BERG: I do not have it in writing. It's just the three words.

CHAIRMAN FELT: Yes. Well, I'm taking over with handwriting that isn't my own, and my own is bad enough, (Laughter) but you'll have to read it again, at least for me.

DELEGATE BERG: I'll read it so I think it will make some sense.

CHAIRMAN FELT: Read it the way—

DELEGATE BERG: It would read, then—his—the substitute motion of Mr. Davis would read, as I have it: "Provided, however, that water rights appropriated"—I would therein substitute "from a flowing stream"—"for recreation, scenic waterways, habitat for wildlife", and so forth.

CHAIRMAN FELT: You're just inserting some additional language.

DELEGATE BERG: I'm only inserting the words "from a flowing stream".

CHAIRMAN FELT: After the word, appropriated" and before the word "for recreation". Does every delegate feel that they have this before them? The motion is to amend the substitute motion by inserting the words "from a flowing stream" after the word "appropriated", so that the first part of the proposal will now read then: "Provided, however, that water rights appropriated from a flowing stream for recreation", and so forth. Mr. Berg, do you wish to speak on your motion?

DELEGATE BERG: Mr. Chairman, I do. This motion—this amendment which I have proposed, I would propose to either Mr. Davis' or Mr. Wilson's motions. Basically I am in agreement with the necessity of one or the other of their motions because I am, shall I say, married to the idea that agricultural uses by diversion must under all circumstances have a superior right to recreational or wildlife purposes or, I think it says, scenic waterway purposes. However, there are really two ways of appropriating water. Generally, when we're speaking of appropriation, and all of our appropriation law is written primarily with a conception that water will be diverted from a flowing stream, but there is another method of appropriating water and of—that, of course, is by impounding a dam at the head of a stream. Now, back in 1957 when I was in the Legislature, I was successful in amending the water right laws to give the right to impound water on an adjudicated stream, and I want to read to you what that amendment says so you'll understand the sense of my proposed amendment. That amendment says: "Provided, however"—"provided that water stored in a reservoir pursuant to an appropriation hereunder, which is subsequent to an adjudication of waters in a flowing stream, when so released from storage, shall not be considered as a part of the natural flow of said adjudicated stream." Now, that has had this effect, at least up to this time. There have been several dams built over in my area of the country at the head of the stream and it has raised the waters, sometimes on a lake, but more often just at the head of a ravine where the stream flows through, it impounds the water during the wintertime. It reserves it for irrigation later in the summer. Always, the—in every adjudication that I've had anything to do with, the court requires that the natural flow, as it comes into that reservoir and leaves it, must at all times be preserved for the water users who have rights, priority rights, in the natural flow of the stream. Now, but the water that is impounded over and above this natural flow—generally the natural flow is that which is spilling over at the end of the season, so it's not difficult to determine it in quantity—that water which spills over—or that natural flow is always reserved to the downstream prior users. Now, the water that is impounded, however, the man who impounds it, the man who spent the money to build and create this reservoir, is said that his—that water to the extent that it is impounded is not a part of the natural flow of that stream, it's not subject to the prior adjudication because it is so-called developed water and belongs to him exclusively so long as he maintains the natural flow of that stream. Now, this has always been—this has been recognized and used repeatedly, in Gallatin and Park Counties, at least. Now, it was based primarily for agricultural uses. We're now talking about a new and different kind of use of water. We are talking about, primarily, recreational use. And I would have you understand that I am the first to stand up and say that agricultural, industrial uses ought always to take priority to recreational use. But I see this in the future, and that is this—that in the future the Fish and Game is going to eventually be building dams also at the headwaters of these streams, and they're going to impound water, and they're going to preserve the natural flow of that water through the dam they build, just as we have done in agricultural purposes. But they're going to impound it for a different purpose, and I think a very worthy purpose. They're going to impound it for that situation so that later in the—in the late time of the year, they can let that water flow down and maintain the flow of that stream to maintain the fish habitat in it. Now, this is the question. Let me tell you about the streams that I've had something to do with on adjudication in Park County. For example, Mill Creek and Pine Creek—these are two small streams. Mill Creek is not so small; it really has quite a head of water. They both flow into the Yellowstone River, but both of those streams, especially during the second cutting of hay, are dry as a bone where the bridge comes across the highway. Much of the accessible fishing area on those two streams are below the highway. There's a good stretch of what once, I suppose, was good fishing stream. It's no longer there. There's no fish life, really, from the last diversion on down to the mouth of the Yellowstone. If the Fish and Game eventually builds a dam at the head of Mill Creek and allows this water to come down, this water would not be available for agricultural uses. It would be, under my amendment, a right of them to turn that down and allow, if you please, fish life. And it's water that would not otherwise be available for agricultural, for any other use, because it's newly developed water created by the impoundment of a dam. My amendment, I think, does this. I think it preserves the right of the Fish and Game to do that, but diversion—in other words, they cannot do that, they can't have a diversion means from a flowing stream, but they can impound at the head of a stream. I think this—I wanted to explain this to you. I want this amendment—I propose this amendment to either Mr. Davis' or Mr. Wilson's motion. That's my argument.

CHAIRMAN FELT: The gentleman, Mr. Schiltz.

DELEGATE SCHILTZ: I would—for my own purposes if not for everybody else's, I would like to try to put this thing in perspective. What we are after here is to try to keep the water, Montana water, from ever becoming North Dakota water or South Dakota water or Nebraska water; and in so doing, we're making it possible to appropriate water for other uses than what it has traditionally been appropriated for and we're making it possible for people to appropriate it without diverting it. Now, the traditional way to appropriate water is to take it out of a stream and put it to a beneficial use, and that's what farmers and ranchers have been doing in the State of Montana for many years. Now, in so doing, we're fooling around with the internal system—that is to say, just the Montana system of water rights. We're running the risk of allowing some other type of appropriation without use as having some priority over the traditional uses of water. Now, the worry—my worry and the worry of Archie Wilson and I'm sure the worry of Carl Davis is that, if we leave this to the Legislature, as the committee report does, we don't trust the Legislature to keep those sacred priorities, especially by not using the water. All they have to do is go to the courthouse, or wherever the board is that does this, and say, "I appropriate so many acres of water for water skiing or for looking at or for swimming in." And what Archie wants and what Carl wants and what I want is that we maintain that, at some future time the priority exists for more essential uses of that water; and it's just purely a matter of not trusting the Legislature. I'll go with Mr. Davis' motion, I'll go with Mr. Wilson's motion. Mr. Berg's motion poses a problem, so far as I'm concerned, when he talks about flowing streams, because he's thinking mostly, in that case, of—that all water is flowing water and eventually gets to North Dakota. The fact is, there's lots of casual water in Montana and farmers use it at one time or another. And farmers and ranchers can correct me if I'm wrong—isn't there, Charley? Now, as I see it, if you limit this to flowing streams and you do have a considerable amount of casual water that gets trapped in a coulee somewhere, somebody can go say, "I want to water ski on that", and under Mr. Berg's plan, that particular priority is excluded. Under Mr. Berg's plan of limiting this to flowing water, if a water skier appropriates it without using it, he comes in ahead of that farmer. And that's my problem with Mr. Berg's amendment, and I resist the amendment for that reason.

CHAIRMAN FELT: For the—I think—I felt that it was appropriate, considering the fact that there was the recess, that there be a general resume' of that nature, and I think it was well done. But from here on, I'm going to insist that comments be directed specifically to the amendment of Delegate Berg and we will not wander into the entire subject.

The delegate, Mr. Davis.

DELEGATE DAVIS: Mr. Chairman. Mr. Berg, would you accede to a question, please?

DELEGATE BERG: Yes.

DELEGATE DAVIS: Mr. Berg, if we discuss your amendment and my amendment and Mr. Wilson's amendment and then it should be the will of the body, on a motion that Mr. Etchart has, to strike this whole thing, wouldn't it be better, in your opinion, to get this back where we can vote on whether they want to delete Section 4 first? If Section 4 is not deleted, then I'd like to reinstate and go on an amendment process. Or not?

DELEGATE BERG: In the first place, I, like Mr. Schiltz, want to try as much as I can through constitutional enactment, to save water for Montana. Now—

CHAIRMAN FELT: No, I was putting the gavel down a little firmly, perhaps, but I would prefer if you could give a brief answer—

DELEGATE BERG: I am.

CHAIRMAN FELT: —as to whether or not you think it would work to withdraw your amendment and his motion, temporarily at least, to see what happens with this other approach.

DELEGATE BERG: Well, my whole idea is, I want to see in this Constitution considerable talk about water, because I want to be sure that we are preserving water to Montana. I believe you can do it, even without these amendments. The amendments are designed to safeguard the priority, as I understand it, for agricultural use. Now, this is the way I look at it. I feel this way, that if—

CHAIRMAN FELT: I believe he wants a vote on the motion, so let's get to it.

Mr. McNeil, for what purpose do you arise? To discuss the motion?

DELEGATE McNEIL: Yes.

CHAIRMAN FELT: Proceed.

DELEGATE McNEIL: Mr. Chairman, all of the reports coming out of that committee room revolved around the three amendments, and none have voiced the opinion of the majority report. Concerning specifically Mr. Berg's amendment, as applied to Mr. Davis' or to Mr. Wilson's, this would foreclose the possibility of recreation having a water right where recreation provides the funds, acquires the right, and would foreclose them from keeping it in a stream, in a natural stream. Example I'd like to give you is the Bitterroot River, where the Fish and Game Department spent $100,000, not of tax money but funds that came from license fees—the Western Montana Fish and Wildlife Association put $5,000 into this—and built an impoundment. They gathered up water, floodwater that would have otherwise been lost. In the middle of the summer, at the height of the irrigating season, the Bitterroot River is drained dry by the irrigators, so at that point in time, the irrigators have used up everything they would have had. Now, the Fish and Game, when they tried to put some water out of the dam that they built with their own money so that the fish could live during the summer, the water is immediately appropriated and put into the fields by the irrigators. Mr. Berg's amendment, Mr. Davis' amendment, and the amendment of Mr. Wilson would still foreclose that possibility. It also would foreclose the possibility of the Fish and Game buying a water right. Water rights can be bought and sold just like land can. If an irrigator who has been using his water for years for irrigation decides to stop irrigating and sell it to the Fish and Game, they could not put it into the natural stream without it being then immediately taken back out by an irrigator. In addition, the concern of Mr. Berg, Mr. Davis and Mr. Wilson is well-founded. But it is overlooking the fact that in all the areas of our state, in the Gallatin and in the Beaverhead, where there is substantial irrigating, all of those waters are well over-appropriated. There are far more appropriations filed than there is actually water there. This section applies only to waters which are not presently appropriated. Section 1 preserves all of the very sacred rights that they're concerned about, so this applies only to those waters. And that, by the very nature of it, means the Missouri, the Yellowstone, or large bodies of water as they're departing the state and which do not have any appropriations on them. In addition, the majority report dictates that the Legislature must establish a method for the acquiring of water rights without a diversion and may establish priorities. The problems that we had in that committee room and that we're having right now speak exactly to what Professor Stone recommended—don't put priorities in the Constitution. For that reason, I would recommend that we defeat the amendment of Mr. Berg's, defeat the amendment of Mr. Davis, defeat the amendment of Mr. Wilson, and then let's meet the test of the majority report as drafted, either on Delegate Etchart's motion to delete or on an affirmative motion to pass it as drafted.

CHAIRMAN FELT: Does the delegate, Mr. Berg, wish to close on his motion to amend the substitute motion?

DELEGATE BERG: Please. I'll try to be brief. I think that I should have said in the amendment, and I'll propose it, "water naturally flowing in the stream". You've got to distinguish, as almost all water law does, contrary to what Mr. McNeil says, that water appropriation comes from water naturally flowing in a stream. Impounded water, water that is contained in a reservoir, in a dam—that's what I'm talking about—is not considered to be a part of the natural flow of a stream; so that what Mr. McNeil is saying, if it occurred in Bitterroot, it occurred because no one took the trouble to make that distinction. Because if the Fish and Game had impounded waters that were not a part of the natural flow of that stream, they could have released that and they could have prevented it and the court decree would have prevented them, anyone, from diverting it, because it's developed water. It's not part of the natural flow of the stream. It was never available to those ranchers when the water was adjudicated. At any rate, my purpose here is to preserve the impounded water not only for this possible Fish and Game use, but primarily to preserve it for agricultural uses, and I think it's a very valid distinction that I would like you to consider.

CHAIRMAN FELT: The delegate, Mr. Romney.

DELEGATE ROMNEY: In view of the fact that the Bitterroot situation has been brought up, there is a little bit of a difference of opinion between fact and—

CHAIRMAN FELT: Delegate Romney, I am not going to rule you out of order—even though you are out of order to be speaking after Mr. Berg has closed—as long as you'll make it brief.

DELEGATE ROMNEY: (Inaudible)

CHAIRMAN FELT: All right. We are now ready to vote on the motion of Mr. Berg to amend the substitute motion of Mr. Davis. The motion of Mr. Berg's inserts the words "from a flowing stream—"

DELEGATE BERG: (Inaudible) "from water naturally flowing." Natural flow—

CHAIRMAN FELT: From the—will you state the words the way you wish them?

DELEGATE BERG: "From the natural flowing stream."

CHAIRMAN FELT: "From the natural flowing stream."

DELEGATE BERG: Yes.

CHAIRMAN FELT: Those are the words to be inserted. We will accept the revised version of the motion.

The delegate, Mr. Wilson, for what purpose do you arise?

DELEGATE WILSON: To call for a roll call vote, Mr. Chairman.

CHAIRMAN FELT: Roll call is called for and sufficient seconds. The delegate, Mrs. Eck, did you have that same thing in mind?

DELEGATE ECK: (Inaudible)

CHAIRMAN FELT: Yes. The question now arises, then, on the motion of Delegate Berg. All in favor will signify by voting Aye on the voting machine; those opposed will vote No. Has every delegate voted?

(No response)

CHAIRMAN FELT: If not; the clerk will tally the vote.

Aasheim	Aye
Anderson, J.	Aye
Anderson, O.	Absent
Arbanas	Nay
Arness	Absent
Aronow	Nay
Artz	Nay
Ask	Aye
Babcock	Nay
Barnard	Aye
Bates	Aye
Belcher	Aye
Berg	Aye
Berthelson	Aye
Blaylock	Nay
Blend	Nay
Bowman	Absent
Brazier	Aye
Brown	Absent
Bugbee	Nay
Burkhardt	Nay
Cain	Nay
Campbell	Excused
Cate	Aye
Champoux	Nay
Choate	Aye
Conover	Nay
Cross	Absent
Dahood	Aye
Davis	Aye
Delaney	Aye
Driscoll	Aye
Drum	Aye
Eck	Aye
Erdmann	Aye
Eskildsen	Absent
Etchart	Aye
Foster	Nay
Furlong	Aye
Garlington	Aye
Graybill	Absent
Gysler	Nay
Habedank	Aye
Hanson, R.S.	Nay
Hanson, R.	Aye
Harbaugh	Aye
Harlow	Nay
Harper	Aye
Harrington	Aye
Heliker	Aye
Holland	Nay
Jacobsen	Nay
James	Nay
Johnson	Aye
Joyce	Aye
Kamhoot	Aye
Kelleher	Aye
Leuthold	Aye
Loendorf	Nay
Lorello	Absent
Mahoney	Nay
Mansfield	Nay
Martin	Aye
McCarvel	Nay
McDonough	Absent
McKeon	Nay
McNeil	Nay
Melvin	Aye
Monroe	Nay
Murray	Nay
Noble	Nay
Nutting	Aye
Payne	Excused
Pemberton	Aye
Rebal	Nay
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	Nay
Rygg	Nay
Scanlin	Nay

Schiltz	Nay
Siderius	Nay
Simon	Nay
Skari	Nay
Sparks	Nay
Speer	Nay
Studer	Nay
Sullivan	Nay
Swanberg	Nay
Toole	Aye
Van Buskirk	Absent
Vermillion	Nay
Wagner	Nay
Ward	Nay
Warden	Nay
Wilson	Nay
Woodmansey	Nay
Chairman Felt	Nay

CLERK HANSON: Mr. Chairman, 37 delegates voting Aye, 51 voting No.

CHAIRMAN FELT: The question before us now is the motion of Delegate Davis, unless he wishes to try again to withdraw it.

The gentleman, Mr. Arbanas.

DELEGATE ARBANAS: I would like to say a few words in support of the majority report. Back a few hours ago when we started the amendments, beginning with Mr. Wilson's amendment, the many people were saying, "Well, that's what we have to do to compromise. Let's accept it and go on with that." I submit that to set up a sacred right, as Mr. Schiltz talked about, of priorities forever is about the most difficult thing that we could possibly set about; that, as Mr. Berg alluded to several times that he's married the idea that agriculture will always come first. If there are some considerations, why, at some time in the future this may not be true and, why, we'd better be pretty careful about it. First of all, I sense that the time may come in Montana when recreation may be our big industry, and if we have locked ourselves into something else, it may be bad news. Also, I kind of resent the idea that agriculture would come first. In a sense it seems to me that we're saying, in so many words, that moneymaking will always be ahead of people-use, and I submit that that may not be always true, that people-use of water may be much different or much larger than always that thing that makes money. The last reason, which is the most compelling in my mind, why I would speak against both amendments is the fact in subsection 2 we spoke of the public use. We passed that, and I'd like to submit that very often industry or agriculture may be private use. Recreation may be the public use that should take priority. Well, anyway, to say one is junior to the other, I think would be a big mistake. To say forever that agriculture or industry will come ahead of—seems to me to be something I don't want in the Constitution.

CHAIRMAN FELT: The delegate, Mr. Wilson.

DELEGATE WILSON: Would Delegate Arbanas yield to a question?

CHAIRMAN FELT: Do you yield?

DELEGATE ARBANAS: Certainly, Mr. Wilson.

DELEGATE WILSON: Would you not agree that perhaps municipal use for water to drink is a beneficial use and should be above recreational use?

DELEGATE ARBANAS: In most cases that I can imagine. I would wonder if that's true every place, always, however.

DELEGATE WILSON: Would Mr. Arbanas yield to another question?

CHAIRMAN FELT: Do you yield?

DELEGATE ARBANAS: Certainly.

DELEGATE WILSON: We spell out in Section 4 the beneficial uses, and it says, "domestic, municipal, agricultural, stock watering, recreation," and so forth. My question to you is that I have seen dry years in certain areas of the State of Montana that drinking water did become a problem for municipalities, and I think they certainly should have a priority. Would you not agree?

DELEGATE ARBANAS: I think what my answer might be, Mr. Wilson, that that's why I wouldn't want it in the Constitution, because situations do change. The very kind of situation you're bringing up, we'd say, why, I wouldn't want to say that, forever, one right had priority.

DELEGATE WILSON: Thank you, Mr. Arbanas.

Mr. President.

CHAIRMAN FELT: Mr. Wilson.

DELEGATE WILSON: I think what we're talking about here is beneficial uses and their priorities, and this is the thought that the delegates should keep in mind. And we are speaking about municipalities. We are speaking about several different uses of these waters, and all we're trying to do here is try to establish priorities to those rights. And I think that as we vote on these issues, this is the thing that we must remember—establish which has the junior and senior rights. Thank you, Mr. President.

CHAIRMAN FELT: The delegate, Mrs. Eck.

DELEGATE ECK: Mr. Chairman, I believe what we're really saying here is that in the State of Montana, if we accept this, recreation can never be really a beneficial use. It's a beneficial use only for us to use for water that's flowing out of Montana, but so far as water within the state, we've ruled it out as a use that has any priority whatsoever. We are really ruling out our blue-ribbon trout streams that were established a few years ago. We are ruling out the possibility of ever establishing a minimum flow in our streams. In other words, we're saying that industry, agriculture, every other use comes first and that just having water in a stream, even a minimum flow of it, is not of any worth to us and never, never shall be. I think that we would be far better off to delete this whole section than to retain the section with a junior standing for these uses.

CHAIRMAN FELT: The delegate, Mrs. Bates.

DELEGATE BATES: Mr. Chairman, fellow delegates. I wish to clarify something here; that in Gallatin County all the water now is appropriated or adjudicated. If the farmers wanted to use the water which is rightfully theirs, they can dry up the river right now. They have a general agreement for the past several years that they reduce the number of inches that they are allowed or permitted to have that is theirs, and they do leave water in the river. This would not make any difference because the adjudicated right, we've already passed on this, is a prior right and it will stay there. What we are discussing here is streamflow that has not been diverted, that diversion would get a prior right, and this means it would be our water to use. If we let it go downstream, which we will by leaving it just in recreation alone, then Dakota will take the right to that. Later, we may never be able to use it in any form, because we are giving them the real right because of their use and our ability not to do so. Thank you.

CHAIRMAN FELT: The delegate, Mr. McDonough.

DELEGATE McDONOUGH: Mr. President, I don't think we really know what we're doing here and all the ramifications of it. And I really feel that we should vote against Mr. Davis' motion so that a motion—substitute motion can come up to delete all of Section 4 and let the Legislature handle it.

CHAIRMAN FELT: Does Mr. Davis wish to close?

DELEGATE DAVIS: I'll withdraw my motion if the delegates will be kind enough to permit this other motion to come in and test it that way. I'll withdraw my motion.

CHAIRMAN FELT: Without objection—

Mr. McDonough for what purpose do you arise?

DELEGATE McDONOUGH: I wasn't going to object; I was going to make a motion to delete.

CHAIRMAN FELT: Without objection, the motion of Mr. Davis will be withdrawn.

The gentleman, Mr. McDonough.

DELEGATE McDONOUGH: As a substitute motion, Mr. President, I'd like to move that the Convention delete subsection 4 of Section 3 of this report.

CHAIRMAN FELT: Do you request a roll call?

DELEGATE McDONOUGH: Yes.

CHAIRMAN FELT: A roll call has been requested.

The gentleman, Mr. Davis. For what purpose do you rise?

DELEGATE DAVIS: May we speak to this motion to delete? Is it—

CHAIRMAN FELT: Yes, it's a debatable motion.

DELEGATE DAVIS: Mr. Chairman, I support Mr. McDonough's motion to delete Section 4. Section 3 provides that all the appropriations are going to be made subject to appropriation for beneficial uses as provided for [by] law. Then Section 4 tries to get in this recreation as a beneficial use without anyone understanding, really, what we're trying to do, as was shown by Mrs. Eck, when she thinks that we can provide a minimum streamflow somehow in July with the water that's already gone out of the state in the highwater time of May. Everyone met in here and we don't reach an agreement among everyone here as to what the language is we're trying to put in. I have—Section 4 is clearly the most statutory article that we've tried to write in the Constitution, and Mr. McNeil concedes that. And it's—the argument the majority uses on this is completely inconsistent with the argument they used yesterday with—on the first article to stick with the article—stick with the committee, and let's leave this up to the Legislature. Okay, we've got a completely different argument today on this because they want to put in a nondiversion flow. I respect and appreciate recreation as a beneficial use, but there's no way in the world—if you don't impound it, it just goes down the creek and out your borders. If this doesn't pass, then, of course, Mr. Wilson's motion was made. My motion was intended—if we were going to have such a motion, I thought we should have more than just the partial language out of a telegram from Mr. Aldrich in our Constitution. So we slowed it up enough to get a little thought—so regardless of which way it goes—but this is statutory. Calling your attention to the 1899 [1889] Constitution, they had a lot of speakers came and testified and they all talked about Montana and water, what we could do with water, and they traced the history of irrigation throughout the world, in all the countries. It all depended on irrigation and water. This attempt to get this in for recreation, scenic waterways and wildlife really sounds good to the people back home, but you're not doing a thing for them. If you leave it up to the Legislature, they have to implement it. Let them sit down and work it out and implement it the way it should be. When you get all the lawyers here—and the laymen here admittedly don't know how you're going to make that section work, but we still want to write it in the Constitution. And, ladies and gentlemen, I think we've got to go back to the concept we came with. Let's try to write a Constitution. We've got the purpose, we've got everything in the first three sections until someone wants to inject their personal idea in the Constitution. I'm prone to that, and we all are. And this is exactly what's happened here. I talked with this—Mr. McNeil on this, I kind of agreed with him at times, but it seems to me now it's one of these things. We should delete Section 4 as completely statutory.

CHAIRMAN FELT: The delegate, Mr. Arbanas.

DELEGATE ARBANAS: I wonder if Delegate McNeil would yield to a question.

CHAIRMAN FELT: Does Delegate McNeil yield to a question?

DELEGATE McNEIL: I yield.

DELEGATE ARBANAS: I understand the first purpose of this subsection was to keep Montana waters guarded against use on downstream. Will this be lost if we delete this thing?

DELEGATE McNEIL: Yes.

CHAIRMAN FELT: The delegate, Mr. Loendorf.

DELEGATE LOENDORF: Yes, Mr. Felt. I'll ask Mr. Berg to yield to a question, please.

CHAIRMAN FELT: Does Mr. Berg yield?

DELEGATE BERG: I yield.

DELEGATE LOENDORF: Mr. Berg, I'm not up-to-date on water law, I think, like you are. I'd like to pose this question to you. I think the last answer Mr. McNeil gave is inaccurate, but I'm not sure. But it seems to me no matter what we put in our Constitution or what we put in our statutory law, that when a dispute results between two states over water, the case will be tried in federal court and the federal government will then make a determination and divide up the water between the two states as the needs exist within those states. Is that not correct?

DELEGATE BERG: I would—I think you're correct and I do not agree with Mr. McNeil that by—I believe that Mr. Loendorf is correct, that this is the way the problem will eventually arise. And I believe that we ought to include at least as many uses of these waters and recognize them in the Constitution, because it gives us that much better status in relation to other states.

CHAIRMAN FELT: The gentleman, Mr. Swanberg.

DELEGATE SWANBERG: Mr. President. I am standing up again with another lawbook in my hand, and I'm afraid I'll get shot down here by Mrs. Robinson, but nevertheless, I'll continue. I'd like to refer the body's attention to Section 89-801, and this has to do with the appropriation of water by the Fish and Game Commission. And it says here: "The unappropriated waters of the streams and portions of streams hereafter named shall be subject to appropriation by the Fish and Game Commission of the State of Montana in such amounts only as may be necessary to maintain streamflow as necessary for the preservation of fish and wildlife habitat. Such uses shall have priority of right over other uses until the District Court in which lies the major portion of such stream or streams shall determine that such waters are needed for a use determined by said court to be more beneficial to the public." Now, it seems that one of the main purposes—main arguments of debate for the last hour or so has been to establish in the Constitution that appropriation of water for recreational purposes is a beneficial use. And it would seem to me that the Legislature has already anticipated this in that respect by this section and, I suspect, other sections. They have already declared that water may be appropriated out of our streams for a beneficial use, which is fishing. I think, with other observers here, that we are actually trying to legislate in here. I think subsection 3 is about all we need. And I'd like to ask Mr. Etchart, if he would, to read what the North Dakota Constitution has in it about water rights.

CHAIRMAN FELT: The gentleman, delegate Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, this is all there is to it in North Dakota. "All surface and subsurface water shall forever remain the property of the people and subject to appropriation for beneficial uses as provided by law." That's it.

CHAIRMAN FELT: The gentleman, Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I want to say to Mr. McNeil and the other members of the committee that I am in complete sympathy with the purpose of subsection 4 and I have no problem with subsection 4. It took me a little while to understand it, I have to say, because getting—acquiring water as subsection 4 says is complete anathema that 25 years of law practice when I'm working with water. But I went—earlier today I talked with Mr. McNeil to see if he could live with Mr. Wilson's proposed amendment, and at that time he told me he could. And I would like to have this Section 4 and I'd like to have it with that amendment. Thank you.

CHAIRMAN FELT: The gentleman, Mr. Ask.

DELEGATE ASK: Mr. Chairman, I rise in support of the motion to delete. I think all—most of us can see the problems we're creating here by putting this section in, and I would like to say that I don't agree that if we don't have Section 4 that we're going to lose our water to North or South Dakota. I submit that within 10 months there's going to be a Legislature meeting here and they can set up the uses and appropriate all the water, and we don't have to do it in the Constitution. And if you don't think they're going to do it, you go home and get some candidates to run that are going to put this in the Constitution—or in the statutes—when they meet here next year. And I'm scared to death what we're doing here. We're just involving in more and more problems here that we could have the worst fiasco you ever saw with this section in here. I think the Legislature is going to do it. I think they know water is important, and I submit that this should be deleted and leave it up to them. Thank you.

CHAIRMAN FELT: The gentleman, Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman.

CHAIRMAN FELT: Be sure you put your name on the list. (Laughter)

DELEGATE SCANLIN: Thank you, Mr. Chairman. If I'm going to go downstream or down the drain, I'm going all the way. I rise in support of the majority report and resist the motion to delete.

CHAIRMAN FELT: The gentleman, Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, I want to talk a little bit about this Bitterroot proposition which was brought up. It is true, as Delegate McNeil said, that the Painted Rocks Lake was constructed. It was constructed, however, as a WPA project. After the government owned it for awhile, the State of Montana Water

Conservation Board acquired it from the federal government, which wanted to get shed of it. As years passed, sportsmen of the Bitterroot and Missoula areas decided they wanted to get more water into the Bitterroot River, which would keep the rocks at the bottom of the river wet during this dry summer season. They raised a fund between the Fish and Game Department, the Western Montana Fish and Game Organization, and the Ravalli County Fish and Wildlife Association, and they bought 5,000 acre-feet of the water from the Painted Rocks Lake, which holds when impoundment is complete approximately 33,000 acre-feet. When the summertime comes and the floodwater is gone in the Bitterroot River, the water—the normal flow of the stream, as described by Delegate Berg, runs down the river and is captured in the irrigation ditches of the various farmers and irrigation districts which own the—which possess the prior rights. At one time my family owned a ranch, which I disposed of some years ago, of approximately a thousand acres. We had a third irrigation right, and in that district of Canyon Creek there were 23 or 24 appropriations. We had third right. In July there was no more water for us, only the water was for the first and second rights. The same thing is true throughout the entire valley. In the summertime, when the floodwaters have disappeared, the river between Victor Crossing—or between Tucker and Victor Crossing is so destitute of water that you could walk across the rocks of the east side channel of the river, the big channel, without getting your socks wet in oxfords. The same thing is true in many other portions of a lot of the creeks, as described by Delegate Berg, in Park County. A lot of our creeks become absolutely dry. The water is captured and put into irrigation, as it should be. However, the 5,000 acre-feet which was purchased by the State Fish and Game Commission and the two sportsmen's organizations—when it is released, it does keep the aquatic insects and the plant life below the water level, it keeps it moist enough in the west fork of the river below the Painted Rocks Dam until it reaches its junction with the east fork of the river. And then, after that, the water which was purchased and was supposed to keep the river moist from the lake down to where it joins the river, the Clark Fork at Missoula, it suddenly disappears. Farmers gather it up in their ditches all along the route until there is none. And this is not a fancy at all; it's a fact. And anyone who lives in the Bitterroot or anyone who goes up there during July and August can see it for themselves. One of the worst examples of it is the State Water Board itself, which owns the former Daly ditches which were unloaded on the State of Montana for $1 when they got too costly to maintain. And then the state put several hundred thousand dollars in them to make them operative and we now have good ditches, and they use more water than they are allowed under their appropriation, and so does almost every other farmer. So, if you're going to maintain the water for wildlife, including fish, you are going to have to have somebody riding herd. Well, we have Water Commissioners. We've had Water Commissioners in Ravalli County twice in the history of the county on the river. We have them all the time, every summer on the creeks, but on the river we just have had them twice in all the history of Ravalli County, and Ravalli County was one of the first counties to be settled in the State of Montana. Now, if the State of Montana, through its Fish and Game Commission, is going to acquire—spend a lot of tax—license payers' money and federal money that they get in order to impound water and turn it loose, why, there's no reason for us to suspect that we'll have any other results than we've had on the Bitterroot River. I think that this is a pretty good example of the need for this impoundment, and I think the only way we're going to get it is through having recreation a beneficial use. Now, we go waiting for the Legislature to do it. Two members of this assembly sat for almost two years on a committee that was set up just for the purpose of trying to write a new water law for Montana, and when we got through with those two years, we had such voluminous text that none of us would sign the bill. And I don't think you're apt to get anything like this out of the Legislature very quickly. But it's worth trying. I do not think we should sacrifice Section—subsection 4, and I'm for the majority report.

CHAIRMAN FELT: The question before us is the motion of Delegate McDonough to delete this in its entirety.

The gentleman, Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, I resist the motion to delete. In the conversations I have had with people, it seems like we haven't really had any problem with this section we are talking about until the Bureau of Reclamation got into it, and as far as I'm concerned, the Bureau of Reclamation would probably just a lot sooner have this grandiose plan go through than to have the people of the State of Montana keep the water. I talked, a couple of weeks ago, with one of Mr. Blaylock's constituents that is in both of the ditch companies in the Billings area. We thoroughly went over the article with he and five others. I received a phone call from this gentleman yesterday afternoon, and he said he was against this, and I said, "Well, now, just a minute. This is the same thing that when we sat down and discussed, you said, 'Well, this we need to keep water for the future of Montana.' The only thing that we did is we took—found when the explanation of it was being written that we had to take part of what was in Section 6 and put it in Section 4 for clarity." I said, "Who's been talking with you? What's causing the trouble?" And, as near as I can find out, it was the Bureau of Reclamation that was causing the trouble. Now, I submit to you that we are the people of the State of Montana and that we are the people that should be writing the Constitution for the State of Montana, and not the Bureau of Reclamation. And I believe that the only quick way and sure way that we are going to have to protect all of the water that we need to protect is to pass Section 4. And I believe that once this is passed, the Legislature will provide the priorities in law as they should, and then we will be sure that we are doing a job for the future generations of this state. As I say, I resist the motion to delete.

CHAIRMAN FELT: The gentleman, Delegate Mr. Holland.

DELEGATE HOLLAND: Yes. Mr. McNeil, would you yield for a question?

DELEGATE McNEIL: I yield.

DELEGATE HOLLAND: Mr. McNeil, to give you my background, I'm a lawyer that never had had a water rights case. We just don't have problems like that in Silver Bow, I guess. In any event, all I ever knew about water was that it didn't flow uphill. That is, up to now. I'm not sure about what I understand. (Laughter) But, I've been sitting here for three hours listening to this debate and trying to find out how anything the two Dakota states are going to do to our water that are going to interfere with recreation. Now how—what can they do in North Dakota or South Dakota that is going to keep us from fishing or water skiing or using these streams? I just—they can't touch this water till it comes within their borders, and I just don't know what they can do.

DELEGATE McNEIL: They can dig a great big ditch and funnel it out of here in the middle of the summer, and this is in the thinking of many of the master planners at the national level.

DELEGATE HOLLAND: You mean it's within the power of North Dakota to come into the State of Montana and dig a big ditch?

DELEGATE McNEIL: Mr. Holland, I'm not nearly so concerned about North Dakota as I am Texas and California.

DELEGATE HOLLAND: Well, I—

CHAIRMAN FELT: Does the delegate, Mr. Hanson, wish to speak on the motion? Delegate Mr. Hanson.

DELEGATE ROD HANSON: Yes, Mr. President, I just wanted to say that the telegrams and the letters that I have got from my people in my area who are irrigation people didn't come from the Bureau of Reclamation, Mr. Gysler. I can assure you this. And as far as I know, Mr. Aldrich has not been in my area in the last two, three weeks.

CHAIRMAN FELT: The question before—The delegate, Mr. Drum.

DELEGATE DRUM: Mr. President. If I could get Mr. Holland's attention, I'm going to invite him on a trip to North Dakota, too, it looks like. The method of establishing a water right, Mr. Holland, is to use it as—on an irrigated project, say. If the people of North Dakota set up an irrigation project and they are using a certain amount of water, then they establish a right to that water. Now, those people in Montana who, 10, 15, 20 years from now, say, "I think I'll establish an irrigation project here", they establish a project, but a person from North Dakota can come back upstream and he can turn the water off of the people who last filed water rights on that stream. And he can go to a court of law and turn them off. My two days in law school have not prepared me for an argument with you, but that are—those are the facts, Mr. Holland.

CHAIRMAN FELT: The gentleman, Mr. Holland, may speak.

DELEGATE HOLLAND: Yeah, I wasn't quite as dense as I pretended to be. What I'm saying—they're talking about recreation use, and

I fail to see what use—what North Dakota does with the water after it leaves the State of Montana could ever affect a recreation use in Montana. And all of this stuff about diversion; I don't care about it. I don't care about it unless you're going to take Montana water out of Montana. Now, there has been a lot of talk about taking Columbia water down to southern California. I was against it. I said, "Why should they use our water?" When I looked into the practicalities of it, they don't want to take the water in Montana down to California. They don't want to take the water in Idaho down to California. They want to take the water in Oregon down to California. They want to go to the mouth of the Columbia, and that's when it has run its entire course and it's going out into the ocean, and they want to take it at that point and take it to California. And I just don't see where we have any big worry about them taking water from the mouth of the Columbia River and taking it down to California. I just can't see where anybody in Montana is going to be hurt by that. But I further can't see—I don't know what Mr. Davis is worried about and I don't know what Mr. McNeil is worried about. That's what's got me puzzled. I'd like to vote intelligently on it, and I don't know what they're worried about.

CHAIRMAN FELT: The delegate, Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. Chairman and delegates. I, too, have been sitting here for quite awhile, trying to understand the issue, and it seems to me if I could try to state it, maybe someone can answer it and help. One of the problems is, we're trying to answer two problems with one section, it seems to me. One is an external one of how to protect our water rights from others; the other is an internal fight in terms of the priorities by which our water is going to be allocated within the state. And it's just very difficult to come to a clarification when you're trying to settle both these issues in one single subdivision of our section. Is there someone who could speak to that and tell me otherwise, or is that really our problem? We're trying to resolve two things with one amendment—or, rather, one statement, and it just is never going to be done. Mr. Mahoney, would you yield to a question?

DELEGATE MAHONEY: (Inaudible)

DELEGATE BURKHARDT: Mr. Chairman, would Mr. Mahoney yield to a question?

CHAIRMAN FELT: Do you yield, Mr. Mahoney?

DELEGATE MAHONEY: Yes.

DELEGATE BURKHARDT: Earlier today, Mr. Mahoney, you spoke of the fact that Montanans are going to have to get together in order to make this thing work. And as I have now stated the problem, does that seem to be related to what we're talking about, or have I missed the whole sense of it as we've talked?

DELEGATE MAHONEY: Would you repeat what you said?

DELEGATE BURKHARDT: My statement was, we're trying, it seems to me, to do two things in one subsection. We're trying to guarantee that we'll not be drained of our potential water use by downstream users and at the same time we are trying to set priorities for the use within the state, and I don't think it can be done in one section in the Constitution. Could you clarify that, or help me?

DELEGATE MAHONEY: Well, you probably are correct in this point, that you're setting two things. All I'm trying to do here in this Convention—as I told you, I don't think we can fight amongst ourselves. We'd better compromise now than to get North Dakota in on the compromising, or South Dakota. Now, I'm not worried—and it's just as much Nebraska. Those are the downstream states. Now, I think that I could live with the present Section 4. I have no objection to the original amendment as presented by Mr. Wilson. I do, though, question to go down to the point of making junior and senior rights around here, because this might be wrong. And now, have I answered your question? If I haven't, I—

DELEGATE BURKHARDT: Mr. Chairman, could I try again and perhaps not with Mr. Mahoney, but just to state the thing? I do appreciate your comments.

CHAIRMAN FELT: Delegate Mr. Burkhardt may speak on the motion.

DELEGATE BURKHARDT: Fine. Thank you, Mr. Mahoney. And it wasn't that you confused me more; it's just that some of you have been wading around in water law most of your lives and others of us are going to have to make a decision, and you're not helping us, it seems to me, to clarify the issue. Some of you have been in this same business and you are giving us opposite points of view, which only says to me you're protecting the interests of one group or another within our state. You are not looking at the overall picture. If I understand this Section 4 and the amendment as we now have it and whether or not I am going to be willing to delete it, I have to understand this. It seems to me that what's being said is: first of all, we have nothing in the Constitution now about water rights. Therefore, we put something in to protect ourselves for the future, as in relationship to people outside this state. One comment I would make is that 700,000 people are never going to have it in a land where one man-one vote is involved and where we're going to be looking at uses all up and down, so eventually federal legislation is going to take precedence over what we're deciding to do, and I think Jerry Loendorf was on target with that one. Another point it seems to me we have to think about, and this is that what I'm understanding is that the people who have been using the water have it over-appropriated now and if we legitimize another beneficial use, their already over-appropriated uses are endangered even further. They don't want to come in to the Legislature on equal terms with Fish and Game and fight it out. They don't want to come in and fight it out there; they want to have a guarantee that it will be on a junior basis when they get here—and I'm you know, just confused at this point. I'd like to see it a beneficial use and I'd like to see them have to fight it out in the Legislature as to how that gets allocated; and it seems to me that the way it's presented to us now, it's very difficult for someone who hasn't waded around in this for a long, long time to make any kind of intelligent decision. Thank you.

CHAIRMAN FELT: The delegate, Mr. Brown.

DELEGATE BROWN: Mr. Chairman, I would like to answer Mr. Burkhardt. By Section 3, we have provided all waters will be held for the state and the people of Montana. From there on we have turned into a Legislative Assembly and each of us has our own little pet we're trying to get into this Constitution. Therefore, we should delete Section 4.

CHAIRMAN FELT: The delegate, Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. Mr. Holland has left, but I think he's under a gross misapprehension. The idea, for the rest of you who may have the same confusion, the idea of appropriating this water now is so that some time in the future North Dakota can't take it and deprive us of it. Now, the water skiing he might want to do. When North Dakota gets a prior right to it for having used it and using it, they could just empty that lake or that river or whatever it is, and Dave Holland wouldn't have any place to water ski. Now, to Mr. Burkhardt, so far as trying to do two things in one section, that's true; we are, Mr. Burkhardt. We're trying to do two things in one section, but they're totally interrelated. It's necessary to do two things in one section to accomplish the purpose that Mr. McNeil and his committee are after. You are also right when you say there's a selfish interest here. I admit there's a selfish interest here, and it stems from this one thing—and that's the worry that the Legislature, when it does do this, will not put the proper priorities on the use of that water. Does that help any?

DELEGATE BURKHARDT: May I answer, Mr. Chairman?

CHAIRMAN FELT: The delegate may speak again.

DELEGATE BURKHARDT: Thank you, Mr. Chairman. And I hear you, Mr. Schiltz, and what you are saying is that we are prepared in this body to make a better decision than will be the Legislature; and I think it may be time to seriously question that.

CHAIRMAN FELT: I don't think we need a lot of additional explanations or summaries. The delegates must be getting ready to vote.

The delegate, Mrs. Eck.

DELEGATE ECK: Mr. Chairman, I have a question I'd still like cleared up. I think that we're all kind of in the same—have the same problem Mr. Burkhardt does, but I wonder if Mr. Schiltz will yield to a question?

CHAIRMAN FELT: The delegate, Mr. Schiltz, yields.

DELEGATE ECK: Under this provision, as amended, would not the provision that the Legislature may, for blue-ribbon trout streams, be crossed out?

DELEGATE SCHILTZ: I don't know. I'd have to ask Mr. McNeil that. I don't know that much about blue-ribbon trout streams, but from—

CHAIRMAN FELT: Does the delegate, Mr. McNeil, wish to respond to the question?

DELEGATE McNEIL: Mr. Chairman, it could be so interpreted, yes.

CHAIRMAN FELT: The delegate, Mrs. Eck, are you satisfied, or are you done?

DELEGATE ECK: Yes, that was the interpretation I had—that these did provide for minimum flow in these streams, and I can't see that they would have any right for it under this.

CHAIRMAN FELT: Yeah. Members of the committee, there are, I believe, six additional amendments that are up here that have not yet been taken up, in addition to those that are before us, and the hope of completing our work without a night session is rapidly dwindling. And so, you can again keep that in your minds.

The gentleman, Mr. James.

DELEGATE JAMES: Yes. Mr. Felt, I, like Delegate Burkhardt, am a little bit confused and I consider myself equal with Delegate Holland. I know that water flows downstream. I also know, along with Delegate Romney, that you can shut off water downstream by building dams and using the water, and we hear about—talk about denying water to North Dakota and using it first. Is this the idea? Now, the Missouri River is also the lifeblood of the State of North Dakota. Just what are we attempting to do here, Mr. McNeil? Will you yield?

CHAIRMAN FELT: Will Mr. McNeil yield?

DELEGATE McNEIL: I yield. I think I can answer that with a 2-minute summary that I started the day out with that apparently everyone has forgotten.

CHAIRMAN FELT: Please do that.

DELEGATE McNEIL: That is, the question, ultimately, probably will be determined, as suggested by Delegate Loendorf, in a federal court. They will look at the state's law. They will up—they will divvy up the water in accordance with the uses that have been made of that water, not just the ownership. They, of course, will look at ownership, which we've taken care of in subparagraph 3. What we are trying to do in subparagraph 4 is say, "Montana recreation, without a diversion, is a valid use that is recognized in Montana law", so that we can say we are using the water. With our present law, our present absence of such a statement in the Constitution or statutory law, when we get into that federal court with the downstream states, they say, "Under your present law, you've got irrigation, domestic, municipal, and that's it." Remember, this does not apply to appropriated waters; it's only those waters that now have no water rights on them, which means it doesn't talk about the Beaverhead and the Gallatin, that are over-appropriated. It's at the tail end of the stream where there's large quantities of water that we don't have any claim on now, that we are not—under our present law, we don't have any recognized use. The Legislature has refused to do this because of this kind of a telegram. That's why we are trying to get it in here.

CHAIRMAN FELT: The delegate, Mr. Anderson.

DELEGATE OSCAR ANDERSON: Well, I live approximately on the banks of the Yellowstone and about 20 miles or less from the Missouri River where the Missouri and the Yellowstone go together, and all I know is that I've seen enough of this water flowing down both those rivers that can be used by other states, and when we want to use this water someday, I want to see a law, in our—or the framework in our Constitution where we could preserve this water to ourselves, if possible. Now, I have watched them water ski over on Lake Sacajawea; I've seen this whole Garrison Diversion Project, and I know that if Montana needed that water, someday had a use for that water that's been appropriated by North Dakota, they don't have it. They already have some rights to water that flows out of Montana, and I want to see us reserve full use of our water rights to Montana, but I sure don't know how to do it. I wish I was smart enough to figure it out.

CHAIRMAN FELT: The delegate, Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, I wonder if all the other delegates are faced with the same dilemma. You know, I spoke before in support of the majority proposal. I am still in support of the majority proposal, but I'm so afraid that if other things are tacked onto it, we are going to really be worse off than we are if we deleted it. So I'm really torn between deleting this, because something else might come up. Now, I sat in on that meeting during the recess, and it was pure legislative work. I mean, I think that it's just ridiculous for us to try to legislate in the brief time that we have. I think, as Charley Mahoney says, we should leave it to the wisdom of the Legislature. And I notice that the last sentence in the majority proposal, it says the Legislature may designate priorities for the future rights if necessary. I am still for the majority proposal, but my question to you, Mr. Chairman—you said you have several amendments there. If we pass this, if I vote for the majority proposal, is there a danger of having these other amendments tacked onto it? Perhaps I'd be better off, since I'm for recreation as a beneficial use—perhaps we are all better off to delete the entire section.

CHAIRMAN FELT: Most of these, I believe, are to succeeding sections of this article.

DELEGATE REICHERT: Fine. So that if we vote for the proposal, there will not be the danger of having—

CHAIRMAN FELT: I couldn't assure you of that. Of course, anyone could make motions to amend—anything can come up yet, but I'm just letting you know there's quite a lot here already.

The gentleman, Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, fellow delegates. I have a letter here from one of the grand old men of water development in the State of Montana, Mr. Dick Fabrick, who has an illustrious background. He's former Chairman of the State Planning Board; he's a former member of the State Water Conservation Board, the State Forestry Board, the State Soil Conservation Committee; he served on the National Reclamation Association as our national director for many years. And I'd just like to read his opinion of this proposal to you. In his own words, he says, "If subsection 4 of Section 3 of this proposal is adopted and under its provisions the prior water right for recreation is established, it would give priority status to one water right over all other uses. It would becloud subsequent appropriations for municipal, agricultural, industrial and other beneficial uses and degrade the values of such subsequent water rights, because the waters were already appropriated for recreational use. The water saved and protected for recreation use would flow undiminished into downstream storage for downstream benefits of power development, navigation and pollution abatement. This prior recreational water right would favor competitive uses in downstream states by restricting or limiting future water development in Montana. The adoption of subsection 4 of Section 3 of this proposal would harm the general interests of Montana. It has no place in the Constitution of the state. It should be eliminated from this proposal."

CHAIRMAN FELT: The gentleman, Mr. Siderius. For what purpose do you rise?

DELEGATE SIDERIUS: Mr. Chairman, I was just wondering if—it seems like everybody wants to do the best thing possible for this water; and it is so vital, I think we should. Would it be possible, or would I be in order or out of order if I moved to set this aside for a later date and let some experts mull this over until we get something concrete for this Convention?

CHAIRMAN FELT: Such a motion would be in order, Mr. Siderius. In an attempt, which may be a failure, to simplify this, I believe the majority—the proposal of the committee is an attempt to lay the groundwork for a future lawsuit in federal court. Those who oppose it and wish to delete it, in general, think that they are creating too much havoc in trying to do it and that the risks of that are too great.

DELEGATE SIDERIUS: Would a motion be in order, then?

CHAIRMAN FELT: A motion would be in order, Mr. Siderius.

DELEGATE SIDERIUS: I so move.

CHAIRMAN FELT: Your motion is to postpone until—

DELEGATE SIDERIUS: Until some agreement can—let's see, until—you want a date set, I suppose.

CHAIRMAN FELT: How about till the end of the article—until we reach—move it to the end of the article?

DELEGATE SIDERIUS: Right.

CHAIRMAN FELT: The motion is to postpone the decision on subsection 4, until—and to take it up again when we have completed the rest of the article. All in favor of the motion, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

DELEGATES: No.

CHAIRMAN FELT: The Noes have it. The motion is defeated.

Mr. McDonough, would you wish to close?

DELEGATE McDONOUGH: Mr. Chairman. As Joe McCarvel just told me now; now I know why the Missouri is called the Great Muddy, because really—and I'm half serious on that. The thing is, we really don't know what we're talking about again. We can talk all day and we still don't know all the ramifications of Section 4. This is really legislation. It's something for the Legislature to do. And if in the future we do get in a lawsuit with the State of North Dakota and the federal government and the State of South Dakota and the other states on down the river, we want to be on all fours. You don't go into lawsuits, if you can prevent it, without being on all fours and without having the facts and everything on your side before you even start the lawsuit. You think about that first. You don't go willy-nilly and then we'll take care of it if we get in a lawsuit. And really, the Legislature is the best prepared to decide the laws and the priorities and the uses and the beneficial uses than what this Convention is this afternoon in three hours of debate. And therefore I would like to renew my motion—or urge you to support my motion to delete.

CHAIRMAN FELT: The question now arises on the motion to delete.

The gentleman, Mr. Heliker; did you wish to speak?

DELEGATE HELIKER: I ask for a roll call vote.

CHAIRMAN FELT: Oh, a roll call, yes. The question now arises on the motion to delete subsection 4 in its entirety. There will be a roll call. Those in favor of the motion will signify by voting Aye; those opposed will vote No. Has every member voted?

(No response)

CHAIRMAN FELT: Does any member wish to change his vote?

(No response)

CHAIRMAN FELT: If not, the clerk will record the vote.

Aasheim	Aye
Anderson, J.	Nay
Anderson, O.	Aye
Arbanas	Nay
Arness	Absent
Aronow	Nay
Artz	Nay
Ask	Aye
Babcock	Aye
Barnard	Nay
Bates	Aye
Belcher	Aye
Berg	Aye
Berthelson	Aye
Blaylock	Aye
Blend	Nay
Bowman	Aye
Brazier	Aye
Brown	Aye
Bugbee	Aye
Burkhardt	Nay
Cain	Absent
Campbell	Excused
Cate	Nay
Champoux	Nay
Choate	Aye
Conover	Nay
Cross	Nay
Dahood	Aye
Davis	Aye
Delaney	Nay
Driscoll	Aye
Drum	Aye
Eck	Absent
Erdmann	Nay
Eskildsen	Absent
Etchart	Aye
Foster	Nay
Furlong	Aye
Garlington	Aye
Graybill	Absent
Gysler	Nay
Habedank	Aye
Hanson, R.S.	Nay
Hanson, R.	Aye
Harbaugh	Aye
Harlow	Nay
Harper	Nay
Harrington	Absent
Heliker	Nay
Holland	Aye
Jacobsen	Aye
James	Aye
Johnson	Aye
Joyce	Aye
Kamhoot	Nay
Kelleher	Absent
Leuthold	Aye
Loendorf	Aye
Lorello	Aye

Mahoney	Nay
Mansfield	Nay
Martin	Aye
McCarvel	Aye
McDonough	Aye
McKeon	Absent
McNeil	Nay
Melvin	Aye
Monroe	Nay
Murray	Aye
Noble	Aye
Nutting	Aye
Payne	Excused
Pemberton	Aye
Rebal	Nay
Reichert	Nay
Robinson	Nay
Roeder	Aye
Rollins	Nay
Romney	Nay
Rygg	Aye
Scanlin	Nay
Schiltz	Nay
Siderius	Nay
Simon	Nay
Skari	Aye
Sparks	Aye
Speer	Aye
Studer	Aye
Sullivan	Aye
Swanberg	Aye
Toole	Absent
Van Buskirk	Aye
Vermillion	Nay
Wagner	Aye
Ward	Nay
Warden	Nay
Wilson	Aye
Woodmansey	Nay
Chairman Felt	Aye

CLERK HANSON: Mr. Chairman, 53 delegates voting Aye, 36 voting No.

CHAIRMAN FELT: The motion is carried. The clerk will now read—Oh, just a second—the proposed amendment of Mr. Berg. Do you have that, Mr. Clerk? Here's a copy of it.

The gentleman, Mr. Berg.

DELEGATE BERG: Mr. Chairman, I did not anticipate, at the time that I made this proposed motion, that subsection 4 would be deleted, so I now move that instead of amending subsection 4, that in lieu thereof the following be substituted as subsection 4. If the clerk will read it, please?

CHAIRMAN FELT: Yes, the motion is being made by Mr. Berg to insert a new subsection 4, which the clerk will now read.

CLERK HANSON: "Mr. Chairman. I move to amend Section 3, subsection 4, by inserting the following sentence: 'Jurisdiction to administer and control the right to the use of waters in adjudicated streams is vested in the District Court.' Signed: Berg."

CHAIRMAN FELT: Does the gentleman, Mr. Berg, wish to speak on his motion?

DELEGATE BERG: I do. Mr. Chairman, of all questions that have been asked of me from constituents that I represent in both Park and Gallatin County, this is the one most-important factor to them. You must remember that in our area, water is the lifeblood of our agricultural system and that water, for the most part, in all tributary streams has been adjudicated by the courts. There is very little flowing water in the tributary streams of the Yellowstone River and of the upper regions of the Missouri, both in the Madison, the Gallatin, the Jefferson, and all of the tributaries to the Yellowstone that are not adjudicated. Now, presently the District Court administers those water rights and it is generally—am I on?—and it is generally done through the system of a Water Commissioner. The proposal is rampant throughout the state to do away with this jurisdiction, and the suggestion is frequently made that it should be placed in a state agency and the state divided into districts, presumably under the jurisdiction of a State Engineer, who will resolve these problems, rather than to have them resolved in the District Court. Now, in our community the ranchers and the farmers, both large and small, are adamantly opposed to this suggested renovation, and to protect them, they have asked me, and I am presenting this amendment at their request, because this is what happens. The two—there may be a dispute between ranchers on the distribution of the water in their various ditches and the commissioner that is appointed by the court is in a position where he can't resolve it. Almost all of those disputes are quickly and thoroughly resolved when the Commissioner and the disputed water right users go to their District Judge and they get it taken care of on a hot Saturday afternoon in July. They are concerned that if they are required to take this before a

District Engineer at some future time, or to—perhaps even into Helena, they will have chaos in the administration of their water rights system. I urge you to give this matter serious consideration. This is now taken care of by the District Court through statute. There is always the possibility, at least in the minds of the people whom I represent, that it might be changed, and they are adamant against that change.

CHAIRMAN FELT: The gentleman, Mr. Etchart.

DELEGATE ETCHART: Mr. Berg, will you yield to a question?

DELEGATE BERG: I yield.

DELEGATE ETCHART: Mr. Berg, I am on the Board of Directors of the Glasgow Irrigation District, which is a Bureau of Reclamation project, part of the Milk River project, and we have a Water Master, we have a Project Manager, and they administer the water on that project on close to a hundred thousand acres. Now, would this mean we would have to turn over control to the District Judge?

DELEGATE BERG: Not unless the water is adjudicated by a judicial decree. That is, the water rights in that—on that stream, if they have been determined and their priorities are set by the District Court under an adjudication proceeding, then the court has jurisdiction. If it has not been, the court does not have jurisdiction, and it would not apply to unadjudicated streams.

CHAIRMAN FELT: The gentleman, Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President—Mr. Chairman, will Mr. Berg yield to a question?

DELEGATE BERG: I yield.

DELEGATE BLAYLOCK: Mr. Berg, if your proposed substitute motion were to pass, does that mean that the State Legislature would not have control or could not legislate anything having to do with waters in our rivers?

DELEGATE BERG: No, it would not mean that. They can act—they can enact any law that they want regarding the use of those rights, regarding the priorities of them, but the administration of them and the control of the ditches and the streams that are under adjudication would remain in the District Court, as they are now.

CHAIRMAN FELT: The gentleman, Mr. Habedank.

DELEGATE HABEDANK: Mr. Berg, will you yield to a question? Mr. Chairman.

DELEGATE BERG: I yield.

DELEGATE HABEDANK: The fact that you said jurisdiction to administer and control this water would not preclude appeals to the Supreme Court, would it?

DELEGATE BERG: Of course not. That's all that's vested in the District Court.

CHAIRMAN FELT: The gentleman, Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman.

CHAIRMAN FELT: Yes, Mr. McNeil.

DELEGATE McNEIL: The committee thoroughly considered this matter. Delegate Berg just stated it is now taken care of through statute. I think that's the precise reason we emasculated our Section 4 as proposed by the committee. Subsection 6, the comments of which I read into the record several hours ago, specifically says that this does not in any way change the present legislatively established system of local control of adjudicated waters by Water Commissioners appointed by the District Court. This is taken care of. It is the present system. Our subparagraph 6 preserves it. It makes no changes. There's one thing that Delegate Berg is overlooking, and that is that some time in the future the District Courts might themselves not want to do this, and it would be locked into the Constitution.

CHAIRMAN FELT: Does the delegate, Mr. Berg, wish to close?

DELEGATE BERG: I will close.

CHAIRMAN FELT: The question now arises on the motion to in—to add a sentence as subsection 4 to read as follows: "Jurisdiction to administer and control the right to the use of waters in adjudicated streams is vested in the District Court." All in favor of the motion—

DELEGATE BERG: I thought perhaps I'd close. I'll be very brief.

CHAIRMAN FELT: Oh, I thought you meant that you had closed. I'm sorry. Go ahead.

DELEGATE BERG: The very evil of which Mr. McNeil speaks is the evil that the people that I represent want to avoid. And let me tell you, we went to a meeting about three weeks ago at home. We had a hundred and fifty people there. We've never had that many before; and at least a hundred of them were there concerning this very problem. They are not satisified with leaving it to the Legislature. They don't want this system disturbed.

CHAIRMAN FELT: Those in favor of the motion will signify by voting Aye.

DELEGATE CHAMPOUX: Could we have a recorded vote, please?

CHAIRMAN FELT: The request is made for a roll call vote. Sufficient seconds made, the members will—those in favor of the motion will signify by voting Aye; those opposed will vote No. Has every member voted?

(No response)

CHAIRMAN FELT: Does any delegate wish to change his vote?

(No response)

CHAIRMAN FELT: If not, the clerk will record the vote.

Aasheim	Nay
Anderson, J.	Aye
Anderson, O.	Nay
Arbanas	Absent
Arness	Absent
Aronow	Nay
Artz	Nay
Ask	Nay
Babcock	Absent
Barnard	Aye
Bates	Aye
Belcher	Aye
Berg	Aye
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Nay
Brazier	Absent
Brown	Nay
Bugbee	Nay
Burkhardt	Nay
Cain	Nay
Campbell	Excused
Cate	Aye
Champoux	Nay
Choate	Absent
Conover	Aye
Cross	Nay
Dahood	Absent
Davis	Absent
Delaney	Nay
Driscoll	Nay
Drum	Absent
Eck	Aye
Erdmann	Aye
Eskildsen	Nay
Etchart	Nay
Foster	Nay
Furlong	Nay
Garlington	Nay
Graybill	Absent
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Absent
Hanson, R.	Absent
Harbaugh	Absent
Harlow	Nay
Harper	Nay
Harrington	Absent
Heliker	Nay
Holland	Nay
Jacobsen	Aye
James	Nay
Johnson	Nay
Joyce	Nay
Kamhoot	Nay
Kelleher	Absent
Leuthold	Aye
Loendorf	Nay
Lorello	Nay
Mahoney	Nay
Mansfield	Nay
Martin	Aye
McCarvel	Nay
McDonough	Nay
McKeon	Absent
McNeil	Nay
Melvin	Nay
Monroe	Nay
Murray	Nay
Noble	Nay
Nutting	Aye
Payne	Excused
Pemberton	Aye
Rebal	Nay
Reichert	Nay
Robinson	Nay
Roeder	Nay

Rollins	Absent
Romney	Nay
Rygg	Nay
Scanlin	Nay
Schiltz	Nay
Siderius	Nay
Simon	Aye
Skari	Nay
Sparks	Nay
Speer	Nay
Studer	Aye
Sullivan	Nay
Swanberg	Nay
Toole	Absent
Van Buskirk	Absent
Vermillion	Nay
Wagner	Nay
Ward	Nay
Warden	Nay
Wilson	Nay
Woodmansey	Nay
Chairman Felt	Nay

CLERK HANSON: Mr. Chairman, 16 voting Aye; 64 voting No.

CHAIRMAN FELT: The motion has failed. The clerk will read Section 5—subsection 5.

CLERK HANSON: "Subsection 5: Priority of appropriation for beneficial uses shall give the better right. No appropriation shall be denied except when such denial is demanded by the public interests." Mr. Chairman, subsection 5.

CHAIRMAN FELT: The gentleman, Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Section 3, subsection 5, of Proposal Number 6, it recommend the same to be adopted.

CHAIRMAN FELT: Members of the committee, unless there's discussion, the question now arises on the motion to—

The gentleman, Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, this language was taken out of my Delegate Proposal Number 48 and I made a drafting error. I'd like to move to delete the second sentence in that section.

CHAIRMAN FELT: Yes, I see we have a motion here that was just handed to me which would also delete that and insert—is this from you?

DELEGATE ETCHART: No, if my—I believe that Mr. Wilson submitted it.

CHAIRMAN FELT: Oh, all right.

DELEGATE ETCHART: But it should be deleted because it makes reference to a controlling body which we haven't incorporated in this article.

CHAIRMAN FELT: Will the clerk read the proposed amendment to subsection 5. Well, read it as a motion, but I see that the other copy shows it's been signed by Mr. Wilson, so this must be the one Mr. Etchart is speaking of. Anyway, read the—

CLERK HANSON: "Mr. Chairman, I move to amend Section 3, subsection 5, page 4, being lines 23, 24 and 25, by deleting the following language—quote: 'No appropriation shall be denied except when such denial is demanded by the public interests' and inserting in lieu thereof the following new material—quote: 'Priority of appropriation for beneficial uses shall give the better right.' Signed: Wilson."

CHAIRMAN FELT: The delegate, Mr. Wilson.

DELEGATE WILSON: Mr. President, in view of the explanation of what Mr. Etchart has just told you, I think this is—could be legislative. I think the briefer—or the more brief the explanation is, the better it is, and it wouldn't be controversial. So, I move that "Priority of appropriation for beneficial uses shall give the better right, period". I think this is the best thing to do at this time to avoid controversy.

CHAIRMAN FELT: The delegate, Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, this provision was placed in the article at the request of Delegate Etchart. If he wants it taken out—I can't speak for the whole committee, but I certainly have no objection. It serves no purpose, and it would be better out of it.

CHAIRMAN FELT: The gentleman, Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman, just so that you're clear on this, now. I only want to take out the second sentence. I want to leave the language in: "Priority of appropriation for beneficial uses shall give the better right." I want that left in. I want the rest of that deleted.

CHAIRMAN FELT: Without inserting the new material. Is that what you desire, too, Mr. Wilson?

DELEGATE WILSON: (Inaudible)

CHAIRMAN FELT: Do you wish to delete the second sentence without inserting any new material?

DELEGATE WILSON: This is correct.

CHAIRMAN FELT: All right, the question—the motion, as corrected, in lieu of the motion as read by the clerk, is simply to delete the second sentence of subsection 5. Those are on lines 23, 4 and 5 of page 4. Are you ready for the question?

DELEGATE MAHONEY: Mr. Chairman.

CHAIRMAN FELT: Oh, the gentleman, Mr. Mahoney.

DELEGATE MAHONEY: Would somebody answer me what they're doing? I just don't understand this. Would we get somebody to explain what you're doing here?

CHAIRMAN FELT: The gentleman, Mr. McNeil; will you—or Mr. Etchart?

DELEGATE ETCHART: Yes, I'll explain that. What I did, Charley, was I took that section from the Wyoming Constitution, which is their Section 3, and I put that into my delegate proposal because I wanted to have something in there that would specify the priority of rights. In other words, the principle "first in time is first in right". I didn't realize, though, that the second sentence makes reference to—in their Constitution to a Board of Control, and we don't have a board or the—any administrative body mentioned in this present article, so it would be inconsistent with what we're doing here. So it was my error in leaving it in when I originally drafted my Delegate Proposal 48.

CHAIRMAN FELT: Does the gentleman, Mr. Mahoney, wish to speak?

DELEGATE MAHONEY: Mr. President, I would say if we've cut out Number 4, I don't see why we couldn't cut out Number 5 and leave that to the Legislature. I just wonder if we need it in there. Maybe I'm wrong; maybe I don't see the great importance of this. I'm not making that as a motion, but I'm just wondering.

CHAIRMAN FELT: The delegate, Mrs. Erdmann.

DELEGATE ERDMANN: Mr. President, I think that Section 6 is just as important as Section 3. These are the only two that I really am concerned—

CHAIRMAN FELT: Subsection 5 is the one that we are on right at the moment.

DELEGATE ERDMANN: Well, pardon me. He asked why 6 shouldn't come out, too. I'll wait till later.

CHAIRMAN FELT: He spoke about 5, I believe.

DELEGATE ERDMANN: That's right.

CHAIRMAN FELT: The delegate, Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I think maybe we're getting a little rumdum here; I'm sure I am. But if I read this correctly, we go back to Section 3 and we have given the Legislature the power to appropriate water for beneficial uses. That seems to me— Now, if we go down to 5, if we emasculate it like we're talking about—"Priority of appropriation for beneficial uses shall give the better right"—will this not give the recreation and the Fish and Game the right to use water from now on, assuming that the Legislature may make them as a beneficial user? Then, down here, we've undone all we've been talking about all day of giving them a junior right. Thank you, Mr. Chairman.

CHAIRMAN FELT: The delegate, Mr. Swanberg.

DELEGATE SWANBERG: Yes, Mr. President. I believe it is a general statement of irrigation law that priority in time is superior, but I think there will be cases—and I think the law recognizes these cases—where a junior user may well have, in the public interests, a superior claim on the water. I can't right offhand imagine a real good example, but suppose a new town was established and suppose that some water user or rancher or somebody had appropriated all the water from that stream that could be used for the water supply for that town. It would seem to me that the interest of the people that were in that community would be superior to one person who owned a ranch. I could foresee cases in the development of our natural resources for recreational purposes where perhaps one person, having appropriated all the water from some certain stream, could block any efforts on the part of the recreation people to make a dam, for instance, and use the water for fishing and things of that nature. And I think that our state law does take those situations into account. I think this priority in time is only a statement of a general rule, and general rules always have many exceptions in the law. But if we put it in the Constitution as a matter of just a flat-out statement that priority in time is always superior, then these very important exceptions would go down the drain; and I would resist. This whole Section 5, I think, should be deleted.

CHAIRMAN FELT: The gentleman, Mr. Davis.

DELEGATE DAVIS: Mr. Chairman, actually, "The priority of appropriation for beneficial use shall give the better right" is what our water law has been since its inception. The second sentence, the public interest is now recognized. When the highway goes through and takes part of a farm and takes part of the water necessary for it, it's under the theory of eminent domain, which is provided for. You can take that. If a city needs some water and there's only so much there and it has to be under the theory of eminent domain, they can take it. Actually, there's no board to determine this; and it only would apply—the second sentence—to future appropriations. Anyway, it's merely a restatement of our existing water law—"The priority of appropriation for beneficial use shall give the better right"—and I submit it should be in the Constitution as a fundamental principle. As to what—there are several different fundamental types of water law, and this states the type that we have always had and will continue to have.

CHAIRMAN FELT: Delegate Mr. Vermillion.

DELEGATE VERMILLION: Mr. Chairman, is a substitute motion in order at this time? I'm not clear about this and I'm not sure of the reason why we do need that in there, so I would like to make a substitute.

CHAIRMAN FELT: A substitute motion is in order.

DELEGATE VERMILLION: If I may, I'd like to make a substitute motion, then, to delete subsection 5 in its entirety. I don't—I'm not sure that there is any necessity of putting this in a constitution; there may be some dangers.

CHAIRMAN FELT: A motion has been made to delete both sentences of Section 5. If there is no further discussion, the question now arises on the motion to delete subsection 5. Those in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

DELEGATES: No.

CHAIRMAN FELT: The Chair is in doubt. We'll use the machine on a division vote. Those in favor of deleting subsection 5 in its entirety will vote Aye, and those opposed will vote No. Has every member voted?

(No response)

CHAIRMAN FELT: Does any member wish to change his vote?

(No response).

CHAIRMAN FELT: If not, the clerk will tally the vote.

CLERK HANSON: Mr. Chairman, 46 voting Aye, 41 voting No.

CHAIRMAN FELT: The motion is carried. Subsection 5 has been deleted.

The delegate, Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, members. I move we recess until 7:30 this evening.

DELEGATES: No.

CHAIRMAN FELT: The motion to recess is a nondebatable motion; and I might mention for the benefit of the delegates, we do have an article on agriculture which we'll also be taking up—I think it's on page 13 in your book. The question now arises on the motion to recess until 7:30 p.m. Those in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

DELEGATES: No.

CHAIRMAN FELT: The Chair is in doubt. We'll use the machines. Those in favor of the motion to recess will vote Aye; those opposed will vote No. Has every member voted?

(No response)

CHAIRMAN FELT: Does any member wish to change his vote?

(No response)

CHAIRMAN FELT: If not, the clerk will tally the vote.

CLERK HANSON: Mr. Chairman, 36 voting Aye, 45 voting No.

CHAIRMAN FELT: The motion has failed. The clerk will read subsection 6.

CLERK HANSON: "Subsection 6. The Legislature shall provide for the administration, control and regulation of water rights and shall establish a system of centralized records." Mr. Chairman, subsection 6.

CHAIRMAN FELT: The gentleman, Delegate Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. I move that when this committee does rise and report, after having under consideration Section 3, subsection 6, Proposal Number 6, it recommend the same be adopted.

CHAIRMAN FELT: The delegate, Mrs. Erdmann, for what purpose do you arise?

DELEGATE ERDMANN: I wish to speak on this.

CHAIRMAN FELT: That will be fine, Mrs. Erdmann. I might just call your attention to the fact that there is an amendment to subsection 6 which has been presented. Would you care to speak before that is read?

DELEGATE ERDMANN: No.

CHAIRMAN FELT: All right, we'll recognize you very quickly as soon as—the clerk will read the amendment which has been offered to subsection 6.

CLERK HANSON: "Mr. Chairman. I move to amend Section 3, subsection 6, in line 28, by adding—quote: 'in addition to the present system of local filing records'." It must go after the period, Mrs. Bates?

CHAIRMAN FELT: The delegate, Mrs. Bates.

DELEGATE BATES: Yes. This is what—Mr. Chairman, this is what is done now. The records are in the county courthouses or the District Courts, and I feel that this should be retained, because this is where these things are decided and for local reference, even though there is a central recordkeeping within the—perhaps the offices in Helena. And I think this is necessary to provide central recording of water rights, but it is also necessary to keep the present water records that are now in the county courthouses or in the District Courts, and that was the reason I added this. If you wish to delete the entire section, that, too, can be done. But I feel that it is necessary if we are going to have a central recording system that we should have the local provision kept.

CHAIRMAN FELT: The delegate, Mr. Berg.

DELEGATE BERG: As a substitute motion, I move to delete all of subsection 6 of Section 3, I think it is.

CHAIRMAN FELT: Yes, it's Section 3. Do you wish to speak on your motion?

DELEGATE BERG: I'll speak on the motion. So long as we've decided we're going to leave everything to the Legislature with regard to water rights—their priorities, their jurisdiction, how they're going to be handled—then I see no point in centralizing records and specifying that in the Constitution, or localizing records and specifying that in the Constitution. I want it deleted.

CHAIRMAN FELT: The delegate, Mrs. Erdmann.

DELEGATE ERDMANN: I speak in favor—against the deletion and in favor of Mrs. Bates' amendment. I think this is a vitally important section to have in here, because the Legislature has not provided this, although they've known about this moratorium coming up. And, actually, all these other states can take all of the water that we do not have appropriated. And how in the world, if you leave it up to the Legislature and they don't do this, how are we going to be able to present a well-documented need for our state? As it is now, every single one of our courthouses have all of these records. Every single county has filed many times over for all of the water that now flows or ever will flow in the water—in the rivers. And I think, to make some order out of that chaos, I think it wouldn't hurt at all to direct the Legislature to provide for a central documentation of these records. Thank you.

CHAIRMAN FELT: Does the delegate, Mr.—The delegate, Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman. In the name of consistency, I rise in support of Mr. Berg's motion.

CHAIRMAN FELT: Does the delegate, Mr. Berg, wish to close?

DELEGATE BERG: I would say I have closed.

CHAIRMAN FELT: Question now—the delegate, Mr. Wilson, do you wish to speak? We'll give you another opportunity to close, Mr. Berg.

DELEGATE WILSON: Mr. President, I agree with Mrs. Erdmann that this is a necessary thing to have in the Constitution, and I think the localized records should be available to the local people in the courthouse. I agree that there should be a centralized place in the State of Montana, in Helena, for the keeping of the records and filings, but I also agree that the local records should be available to the people at the local level in the courthouse.

CHAIRMAN FELT: Delegate Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman, I agree with Mr. Berg in this situation. They do have a—the State Water Board now are going through the counties and they have records of the—of all—in all cases where they have done this, and the records are in the local systems; so I see no reason for this article.

CHAIRMAN FELT: Question now arises on the motion of the gentleman, Mr. Berg, unless he wishes to speak again.

DELEGATE BERG: I close.

CHAIRMAN FELT: Those in favor of the motion to delete subsection 6 will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Those opposed will vote No.

DELEGATES: No.

CHAIRMAN FELT: The Ayes have it.

UNIDENTIFIED DELEGATE: Division.

CHAIRMAN FELT: Well, all right. If you're that late again, you won't get it, because I waited quite a while before rapping. Those in favor of the motion to delete subsection 6 will vote Aye on the voting machine, and those opposed will vote No. Has every member voted?

(No response)

CHAIRMAN FELT: Does any member wish to change his vote?

(No response)

CHAIRMAN FELT: If not, the clerk will tally the vote.

CLERK HANSON: Mr. Chairman, 42 delegates voting Aye, 44 voting No.

CHAIRMAN FELT: The motion has failed. The question now arises on the motion of Delegate Bates to amend subsection 6 by adding the words "in addition to the present system of local filing of records". All in favor of the—Yes.

DELEGATE BATES: Mr. Chairman. We deleted this section, so I can't see how we can—

CHAIRMAN FELT: The motion failed, Mrs. Bates.

DELEGATE BATES: Oh, I'm sorry.

CHAIRMAN FELT: All in favor of the motion to amend will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Those opposed will vote No.

DELEGATES: No.

CHAIRMAN FELT: The Ayes have it. So ordered. The question now arises on the motion of Delegate Murray to adopt subsection 6, as amended. Those in favor of the motion will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Those opposed will vote No.

DELEGATES: No.

CHAIRMAN FELT: The Ayes have it. The clerk will read Section 4.

CLERK HANSON: "Section 4. Cultural resources. The Legislature must provide for the identification, acquisition, restoration, enhancement and preservation of scenic, historic, archeological, scientific, cultural and recreational areas, sites and objects and their use and enjoyment by the people." Mr. Chairman, Section 4.

CHAIRMAN FELT: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Section 4 of Proposal 6, it recommend the same be adopted.

CHAIRMAN FELT: We have two proposed amendments, I believe. I think the first one—Mr. Clerk, which one is first in order? The one of Mr. Jacobsen's? We'll take the one that comes first in order. I believe there are three of these. I don't have them all.

CLERK HANSON: "Mr. Chairman. I move to amend Section 4, page 4, line 29, of the Natural Resources and Agricultural Committee Proposal by adding, after the words 'Cultural resources', a subsection 1. And further amend Section 4, page 5, line 3, by striking the comma after the word 'objects'—line 3, the comma after the word 'objects' and inserting in lieu thereof a period; and further amend Section 4, page 5, by deleting the remainder of lines 3 and 4—delete the following words 'and their use and enjoyment by the people'; and further amend Section 4 by adding a new subsection 2 by inserting the following language and punctuation: 'Subsection 2. The Legislature must reserve such places from the public domain and provide for their administration and their use and enjoyment by the people.' Signed: Mr. Jacobsen."

CHAIRMAN FELT: Mr. Jacobsen and members of the committee, we will first have an explanation of the proposal as it appears from the committee report.

The delegate, Mr. Rebal.

DELEGATE REBAL: Thank you, Mr. Chairman. In response to widespread citizen and delegate interest in preserving our ghost towns, as well as our scenic, archeologic, scientific, cultural and recreational areas, sites and objects, your committee proposes this self-explanatory section. The committee felt that such a section was appropriate in an article providing for protection of our total environment for this and future generations, and I move we accept that.

CHAIRMAN FELT: All right. The gentleman, Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President and fellow delegates, I want to take the time to thank the committee for the excellent job they had in writing that up. It's almost the same words. However the—and I won't go into what I had prepared here because of time—but we haven't used the word "administration". I have talked to the Fish and Game Department and the Montana Historical Society about this thing. We have over 50 historical societies in the State of Montana. There are over 500 ghost towns in Montana, as well as many, many other sites that must be preserved. But we must have administration of them. There is one thing I would just like to read from the Montana Ghost Town Society letter that I believe all the delegates received. And this was, at the present time the only powers that the Legislature has given to the State Board for the protection of ghost towns, scientific, historic, archeological, scenic and recreational resources of the state is to the Montana Fish and Game Commission under Section 62-301, R.C.M. 1947, as amended. The provision regarding historical and prehistorical structures which were found in Section 75-1201, R.C.M. 1947, was repealed by the 1971 Legislature. By the repeal of this later act, no penalties, procedure or protection is offered to any historic or prehistoric site. Anyone may, without discrimination, dig and destroy artifacts and other historical data which should be recorded and preserved for our state. Unfortunately, no other power exists for the control and protection of these ghost towns, historical or archeological sites, other than the fact that anyone violating rule of the Fish and Game Commission concerning them shall be punished by a fine of not more than $400 or more than six months in the county jail, or both. The Historical Society, I believe, would be very happy to have under its jurisdiction all of these historic sites. And if the Legislature were to be directed to administer this and put it under the hands of the Montana Historical Society—the

Fish and Game and the Historical Society are in agreement, and I'm sure that we could save these places. And we must do it very soon, for the simple reason that every year more of these ghost towns are disappearing through fires, through vandalism, and, as has been suggested, by just plain neglect. We could restore some of these places—and there is federal money available to do such a thing. And we've talked about it in Demersville up in our Flathead area; however, that place is completely gone. So I would just like the word—and possibly what I said in my amendment is wrong. Possibly we should just use the word "administration" and place it at the end of the paragraph or between the word "administration"—I haven't got the thing here at all. Yes, "enhancement and preservation and administration". You see, on the—on line 1 on page 5—maybe just "administration" is all that we need there, because the Legislature is already directed to do so. So we don't need the whole paragraph, but I would be willing that Style and Drafting take this up. Thank you.

DELEGATE SCHILTZ: (Inaudible)

DELEGATE JACOBSEN: After—on line 1, "restoration and enhancement, preservation"—and then add in there "and administration".

CHAIRMAN FELT: Is that the motion you wish to make—

DELEGATE JACOBSEN: Yes.

CHAIRMAN FELT: —Mr. Jacobsen?

DELEGATE JACOBSEN: Yes.

CHAIRMAN FELT: Members of the committee, is there any further discussion? (No response) If not, we're ready to vote on the motion to amend by inserting the words "and administration" on line 1, page 5, after the word "preservation". All in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

DELEGATES: No.

CHAIRMAN FELT: The Ayes have it.

CLERK HANSON: "Mr. Chairman. I move to amend Section 4, page 5, line 3, of the Natural Resources and Agricultural Committee majority proposal by inserting, after the word 'sites' and before the word 'and', the word and punctuation—quote—comma—'records'. Signed: Brazier."

CHAIRMAN FELT: The gentleman, Delegate Mr. Brazier. Do you wish to speak on your motion?

DELEGATE BRAZIER: Very briefly, Mr. Chairman and fellow delegates. The proposal is put in at the suggestion of Sam Gilluly from the Historical Society. I think it just got overlooked in the rush of things as we were preparing our majority report. Thank you, Mr. Chairman.

CHAIRMAN FELT: Members of the committee, the motion is to amend by inserting the word "records" on line 3 of page 5, after the word "sites". All in favor of the motion, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.
(No response)

CHAIRMAN FELT: The Ayes have it. Just a second—
The delegate, Mr. Murray.

DELEGATE MURRAY: I understand that the other proposed amendment delivered to our desk has been withdrawn. Therefore, Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Section 4 of Proposal Number 6, it recommend the same be adopted as amended.

CHAIRMAN FELT: The question now arises on the motion that when this committee does arise and report, after having had under consideration Section 4 of the proposal of the Committee on Natural Resources and Agriculture, Number 6, that the same be adopted as amended. Those in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed will vote No.

DELEGATES: No.

CHAIRMAN FELT: The Ayes have it. Members of the committee, we will now consider any motions to reconsider or any further amendments to the article that has—on Environment and Natural Resources.
The delegate, Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, having voted on the prevailing side of the Cate amendment in Section 2, Reclamation—page 4 in the book—I move to reconsider this amendment.

CHAIRMAN FELT: The delegate, Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman. I'll read what the section says, and then I'll defer to another delegate. Is that proper?

CHAIRMAN FELT: That will be proper.

DELEGATE KAMHOOT: "Section 2. Reclamation." The section reads: "All lands disturbed by the taking of natural resources must be reclaimed to a beneficial and productive use. The Legislature shall provide effective requirements and standards for the reclamation of lands disturbed by the taking of natural resources." I would now yield to Delegate Studer.

CHAIRMAN FELT: Delegate who?

DELEGATE KAMHOOT: Studer.

CHAIRMAN FELT: The delegate, Mr. Studer.

DELEGATE STUDER: Mr. President. We have all made a serious mistake when we added the words—I quote—"to a beneficial and productive use" to the reclamation section. All of us favor reclamation. We want to recognize this in our Constitution, and we should. But by addition of the words "to a beneficial and productive use", we have gone beyond a constitutional statement of principle. We have entered into a legislative field. By these words in our Constitution, we have retarded and hamstrung the future economic growth of our great state. These words require not only a beneficial use but also a productive use. We all know that this is impossible in many cases. Consider the farmer or rancher who has a gravel pit on his own place for his own use. In most cases, it is impossible to reclaim it to a productive use. Consider the hardrock miner or prospector. With these words, he is faced with an impossibility, and yet mining is our second-largest industry in Montana. Consider the builder, the contractor of our highways. Each one of these depend upon natural resources from the earth, which in many cases cannot be reclaimed to a beneficial and productive use. They can be reclaimed, yes; but not necessarily to both a beneficial and a productive use. I will now say a few words from the contractor's viewpoint. This is a very dangerous sentence, this "beneficial and productive use". In the course of highway construction, many times we go into an area not necessarily now productive, take out rock or gravel from its present location, and by processing the material, make it into a usable product, such as a rock backfill or a gravel base or a hot-mix top course. It would be nearly impossible for a contractor in many arid areas to make the used pit areas either beneficial or productive. Both are called for. How can I make a rock slope or a rocky or gravelly base of a pit beneficial or productive? In nearly all cases, the Highway Department has located areas of quarries and pits away from highways so they will not be seen by the traveling public, and in most cases not even easily accessible to the public. So this part of the environmental problem can be taken care of if slopes are graded and sloped in regulations we now have—to be restored to a condition as close as possible to its former condition. These words—"reclaim to a beneficial and productive use" is ambiguous, dangerous, and could cause harm to many who are unable to comply with this directive. If enforced in some way, it could raise the cost to ethereal heights. I submit to each of you: haven't we gone too far? We will and we should set forth the principle of reclamation in our Constitution, but we have gone too far by the addition of these words. We have gotten into a legislative field. These words, if not taken out, will haunt us in years to come. Yes, they could very well spell the defeat of the whole Natural Resources section of this Constitution when voted on by the people later on this year. I not only urge but I implore each of you to support the motion for reconsideration. Thank you.

CHAIRMAN FELT: The motion is to reconsider the action taken by the committee on Section 2.

The delegate, Mr. Cate.

DELEGATE CATE: Well, I'm glad that Mr. Studer is against putting legislative things in the Constitution. I feel the same way about his right-to-work proposal. The—if we don't set any standards for reclamation, it doesn't mean anything, and "beneficial and productive use" is about the most moderate language that we could possibly put in there. And I don't want to take a lot of time, but Mr. Studer asked me what he could do with his gravel pits, and so Mr. Champoux and I have a list of possibilities here. I don't think that I should take the time of the committee to discuss it further. I think it's a question—

CHAIRMAN FELT: You'll have an opportunity to speak, of course, if the motion does prevail.

The delegate, Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, a clarification of a point of order. Have we voted for reconsideration yet?

CHAIRMAN FELT: No, that's the motion before us—

DELEGATE SCANLIN: Well, I simply want to—

CHAIRMAN FELT: —simply whether or not we are going to reconsider—

DELEGATE SCANLIN: Mr. Chairman, I think we got in trouble once before on this business of debating an issue before we reconsidered it.

CHAIRMAN FELT: We permit some explanation of the purpose of the motion to reconsider, but we would—and it is open for debate—but we do respect the fact that there will be a subsequent opportunity to discuss in detail if the motion to reconsider prevails.

The delegate, Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, members of the committee, I would very much like to see this committee reconsider their action in connection with the amendment that was passed this morning. And if it's passed, why, I will have a message for you from the Anaconda Company, being that I'm a company man and I'd just like to have that opportunity to see whether or not, really, this Constitutional Convention wants to put the Anaconda Company out of business or not. And if they do, why, I think it should be done today.

CHAIRMAN FELT: Does the delegate, Mr. Kamhoot, or the delegate, Mr. Studer—

Delegate, Mr. Jacobsen.

DELEGATE JACOBSEN: I want to see the committee reconsider this. After all, we've used the gravel, we've used these things out of these pits and so on, for our benefit already. I think the good Lord put these things here for us to use and not later. And to put and restore them or try to restore them into their natural way, we can't do that. So I believe that we must reconsider this to save our industry in this state. And our building industry is just as important because of the sand and gravel comes out of these pits, and to restore them to their natural state is absolutely impossible. Thank you.

CHAIRMAN FELT: The delegate, Mr.—the delegate, Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman, I rise in support of the motion to reconsider. I would like to have someone tell me how you plan to put land back into production that, maybe, wasn't producing anything in the first place.

CHAIRMAN FELT: The delegate, Mr. Kamhoot.

DELEGATE KAMHOOT: Yes, Mr. Chairman. I moved for reconsideration here mainly because, when this amendment was passed, it ran through in just about 20 seconds and I doubt if very many people here really understood what it was. I didn't. I thought it was just merely a thumbprint on the—in the Constitution. It wouldn't hurt anything. But, after thinking a little and talking to a few very knowledgeable people in this room, I find that we have certainly accepted something here that I don't believe the State of Montana could ever live with. If it put the Anaconda Company out of business, this would be pretty bad, as Mr. Joyce says. Maybe it would. I am sure that, perhaps, the courts would have to spend a lot of time and throw this thing out completely, because I don't believe we could use it. Thank you, Mr. Chairman.

CHAIRMAN FELT: The delegate, Mr. Dahood; for what purpose do you arise?

DELEGATE DAHOOD: Mr. Chairman, I support the motion to reconsider. I want to state that Tommy Joyce, I think in jest, said he's a company man. He is not, and neither am I, but let's not divorce ourselves from some commonsense. Let's think about it and reconsider it.

CHAIRMAN FELT: The question now arises on the motion that the committee reconsider its action on Section 2. All in favor—

DELEGATES: Aye.

CHAIRMAN FELT: No—

Mr. Swanberg?

DELEGATE SWANBERG: I would ask for a roll call vote.

CHAIRMAN FELT: Are there sufficient seconds? (Delegates stood) There being sufficient seconds, there will be a roll call vote. Those in favor of the motion to reconsider will signify by voting Aye; those opposed will vote No. Has every delegate voted?

(No response)

CHAIRMAN FELT: Does any delegate wish to change his vote?

(No response)

CHAIRMAN FELT: If not, the clerk will record the vote.

Aasheim	Aye
Anderson, J.	Aye
Anderson, O.	Aye
Arbanas	Nay
Arness	Absent
Aronow	Aye
Artz	Aye
Ask	Aye
Babcock	Aye
Barnard	Nay
Bates	Aye
Belcher	Aye
Berg	Absent
Berthelson	Aye
Blaylock	Nay
Blend	Nay
Bowman	Aye
Brazier	Aye
Brown	Aye
Bugbee	Nay
Burkhardt	Aye
Cain	Aye
Campbell	Excused
Cate	Nay
Champoux	Nay
Choate	Aye
Conover	Aye
Cross	Nay
Dahood	Aye
Davis	Aye
Delaney	Aye
Driscoll	Aye
Drum	Aye
Eck	Aye
Erdmann	Aye
Eskildsen	Absent
Etchart	Aye
Foster	Aye
Furlong	Aye
Garlington	Aye
Graybill	Absent
Gysler	Aye
Habedank	Aye
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Absent
Harlow	Nay
Harper	Nay
Harrington	Absent
Heliker	Nay
Holland	Absent
Jacobsen	Aye
James	Aye
Johnson	Aye
Joyce	Aye
Kamhoot	Aye
Kelleher	Absent
Leuthold	Aye
Loendorf	Aye
Lorello	Aye
Mahoney	Nay
Mansfield	Aye
Martin	Aye
McCarvel	Aye
McDonough	Aye
McKeon	Absent
McNeil	Nay
Melvin	Aye
Monroe	Nay
Murray	Aye
Noble	Aye
Nutting	Aye
Payne	Excused
Pemberton	Aye
Rebal	Aye
Reichert	Aye
Robinson	Aye
Roeder	Nay
Rollins	Nay
Romney	Nay
Rygg	Aye
Scanlin	Nay
Schiltz	Nay
Siderius	Nay
Simon	Aye
Skari	Aye
Sparks	Aye
Speer	Aye
Studer	Aye
Sullivan	Aye
Swanberg	Aye
Toole	Aye
Van Buskirk	Aye
Vermillion	Nay
Wagner	Aye

Ward	Aye
Warden	Absent
Wilson	Aye
Woodmansey	Nay
Chairman Felt	Aye

CLERK HANSON: Mr. Chairman, 66 delegates voting Aye, 22 voting No.

CHAIRMAN FELT: The motion is carried. No action has been taken now on Section 2. Does any delegate have a motion?

The delegate, Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I move at this time that we strike from Section 2—on page 3, where it says "reclamation" —we strike the words "to a beneficial and productive use". Thank you, Mr. Chairman.

CHAIRMAN FELT: Is there any discussion?

The delegate, Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, I just wish to be sure that I had it written right in the first place. I had "to a beneficial or productive use". Is the word "and" in there, or the word "or"?

DELEGATES: "And".

CHAIRMAN FELT: Will the clerk read the amendment made by Mr. Kamhoot.

CLERK HANSON: Should I read the section first?

CHAIRMAN FELT: No, read the motion, if you can.

CLERK HANSON: "Section 2. Reclamation." I'll read the sentence as amended: "All lands disturbed by the taking of natural resources must be reclaimed"—striking the next words, "to a beneficial and productive use".

CHAIRMAN FELT: Now, is that the way you believe, Mr. Clerk, that the sentence—that the paragraph would read after the amendment? Is that what you intended, Mr. Kamhoot?

DELEGATE KAMHOOT: Mr. Chairman, that is the way that it reads now, and I move to strike the words "to a beneficial and productive use".

CHAIRMAN FELT: Did you move to restore it back to the original condition of the committee report?

DELEGATE KAMHOOT: Mr. Chairman, I did not.

CHAIRMAN FELT: All right. Are you able to follow that, Mr. Clerk, now?

DELEGATE KAMHOOT: Mr. Chairman.

CHAIRMAN FELT: Read the sentence then, Mr. Clerk, as you believe that it's intended to read.

CLERK HANSON: "All lands disturbed by the taking of natural resources must be reclaimed"—period.

CHAIRMAN FELT: Then pick up again—where do we begin again?

CLERK HANSON: "The Legislator—Legislature shall provide efficient—effective requirements and standards for the reclamation of lands disturbed by the taking of natural resources."

CHAIRMAN FELT: The delegate, Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, I rise in support of the proposed amendment of Delegate Kamhoot. I spoke, of course, this morning in favor of deleting the entire section, and that lost. And then, as the subsequent debate got hotter and some people on the floor had the temerity to say that us people who were in favor of deleting the section were just knuckling under to the Anaconda Company. And so I have this to say: I now appear before you as an emissary of the Anaconda Company and I think, also, however, as an emissary of the people who elected me to this Constitutional Convention. I was able to get elected because I had the endorsement, in both the primary and the general election, of the AFL-CIO, and so I was elected. In the general election I spent no dollars. I did not campaign, and, notwithstanding, I was elected. And I really believe that I come over here to represent the people who live in Silver Bow County; and my principal constituent, I take it, is the principal industry of Silver Bow County. And I do not believe the laboring people of Silver Bow County want to put the Anaconda Company out of business. But if this Convention does, why, then that's another matter. And I don't believe that it makes any sense to write into the Constitution that the Anaconda Company must reclaim their land to a beneficial use when they take any copper out of the ground, because they can't do it. And they have advised me to tell this delegation that, so far, they have taken 725 million tons of material out of the Berkeley pit in Butte alone and if they are required by the Constitution of the State of Montana, before they can take any more material out of that ground, that they must fill up that pit, they cannot do it, they will not do it, and no power on earth can really force them to do it. It's completely impractical to expect that they can or that they should. And why write into the Constitution a requirement that they—before they can disturb the natural resources, that they must do something that is absolutely impossible. Now, everybody recognizes what the purpose of this section was—is it the people of eastern Montana are afraid of the strip mining and they want those people not to be able to just despoil the land; and everybody agrees that that's reasonable. And the Legislature has provided regulations and can in the future provide more-stringent regulations to require them to reasonably reclaim the land, but to require in the Constitution that this land must necessarily, and in all cases for everyone who disturbs the natural resources to put the natural resources back to a beneficial use, just seems to me to be the height of absurdity. And so, if I have lost my liberal credentials by advocating this, why, so be it. I cannot sit here and allow—or I can't—I shouldn't say "allow"—I cannot sit here and be silent while the Constitution writes in some nonsense into the Constitution. And I think I represent the people of my county, the rich and the poor alike, when I speak in favor of this amendment. Now, we provided here in the amendment that the Legislature will apply—provide effective requirements and standards for the reclamation of lands disturbed by the taking of natural resources, and I have no objection to that. I don't think the Anaconda Company does; I don't think the Butte miners' union do. But it seems to me that if we were afraid of bringing down the wrath of some people who were—some offices, some politicians who were removed from the Constitution, and you're still willing to take on the Anaconda Company and the Butte miners' union and all the people who deserve—who make their living from the mining industry and you still think you're going to pass the Constitution, well, I don't think so. And I don't think that it's being—that it's the issue of what the company wants or we're knuckling under to the company and all that baloney. It seems to me that it's an issue of being reasonable people. The Anaconda Company is doing their best, I think—maybe not; maybe the Legislature ought to make them do better to reclaim the land—but they simply cannot reclaim the mining property in Butte. When they take the—they necessarily cannot reclaim the Berkeley Pit; and the Berkeley pit, of course, is the lifeblood of our community now and hopefully will be for many years to come. And it just seems to me that if the issue is that we want to make sure that the Anaconda Company doesn't continue to do business in the state, why, then we ought to reject this amendment. But I don't think anybody seriously wants to do that. So I respectfully submit that the amendment be adopted. Thank you.

CHAIRMAN FELT: The delegate, Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, I don't think anyone will accuse me of coming here as a representative of the Anaconda Company. However, I must declare that I am a stockholder in the Anaconda Company; a small one, to be sure. I think maybe Mr. Joyce has a point, and I think those words probably don't belong and therefore move a substitute motion that Section 2, as adopted by the committee this morning, be stricken in its entirety and the original report of the committee substituted therefor. Mr. Chairman, may I speak?

CHAIRMAN FELT: Yes, Mr. Heliker, you may speak on your motion.

DELEGATE HELIKER: The committee's proposal seems to me to be innocuous enough and yet, at the same time, to say enough to satisfy all of us here from all points of view. I don't know quite why we didn't accept it to begin with. It says, "All lands disturbed by the taking of natural resources must be reclaimed to as good a condition or use"—"or use", get the "or"—"as prior to the disturbance. The condition or use to which the land is to be reclaimed and the method of enforcement of the reclamation must be established by the Legislature." So we're leaving it to the Legislature, and, in its wisdom, I'm sure it will take into account all the sorts of problems that Mr. Joyce has mentioned and that have previously been mentioned before this committee. Thank you.

CHAIRMAN FELT: The delegate, Mr. Studer.

DELEGATE STUDER: Mr. President, I think we are—or Mr. Felt—

CHAIRMAN FELT: Yes, Mr. Studer.

DELEGATE STUDER: I think we're getting right back into the spot we were before we argued this for a long time this morning. When you put in this "in as good a condition or use", you're just about back to where this beneficial and productive use is in force again for the practical effect of it all. How are you going to put something back into as good a condition as it was when you've taken out what was in there and used it? You're getting into an impossible condition here. I don't want to go through this whole lingo that I had awhile ago, but I'm sure that quite a few small industries couldn't live with it. How are you going to take out these little miners, loggers, and the like, that go out here and go to work? Their work is covered pretty well by refinishing their stuff into as close a condition as possible, but to subscribe to as good a condition as it was is impossible. We're getting into a thing that just a lot of people aren't going to accept. And I'd like to see the Constitution, as we make it up here, accepted; and I think that if we pass something like this original deal, we'll be getting a lot of people to vote against it rather than for it. I object to it.

CHAIRMAN FELT: The delegate, Mr. Harper.

DELEGATE HARPER: Mr. Chairman, I'm glad this motion came up. Maybe—I think we do need to have very careful wording. I'm concerned that we leave this without any words or directions to the Legislature, because some future Legislature may be so oriented and be so anticompany that they might write in something that would really be detrimental to the company and to the economic situation in Butte. I take it that the company now feels that no future Legislature ever will, but I can't really say that I'm guaranteed of that. Mr. Joyce says that we were talking this baloney when we opposed him. I'm not sure he meant that, exactly. I think we have a right to speak on the other side. I think that the coal miners who are going to operate in the future in eastern Montana should be asked to do something in the way of reclamation if—and Mr. Joyce says that he can see that. Now, what I can't understand is, why should the coal miners in eastern Montana in the future be required to do anything if copper miners in western Montana aren't? It seems to me that we can arrive at some kind of language that will say what we want. I think we need a reclamation section in here. We talked long and hard over water rights. I think land rights are just as important, and I believe, though we are tired at the end of a day, we can arrive at good words. I support Mr. Heliker's suggestion, having looked this over during the afternoon; having been a little bit worried about the words "beneficial and productive"; feeling that we went too far, too soon, with those words. I believe a reversion to the original language of the committee would be the right thing to do at this time, and I support his motion.

CHAIRMAN FELT: Members of the committee. For your general information, the motion before us would be, in effect, to adopt the original committee proposal. The previous motion by Mr. Kamhoot was to enact a Section 2 on Reclamation which was read to you. If you are not clear as to how that section would read under the Kamhoot proposal, we will have it read again. If you are—and hearing nobody ask for it, we will not.

The delegate, Mrs. Cross.

DELEGATE CROSS: Yes, Mr. Chairman. I have a comment that I'd like to make; and then if Mr. Studer would yield, I'd like to have a—ask him a question.

CHAIRMAN FELT: Will the delegate, Mr. Studer, yield to a question?

DELEGATE STUDER: I sure will.

DELEGATE CROSS: Mr. Studer, your remarks really played on my heartstrings, so I wonder if you would accept this motion if I were to make it: "All lands may be disturbed in any way by the taking of natural resources and left in any condition the disturber may desire."

DELEGATE STUDER: No, I don't. I think you're being a little facetious there.

CHAIRMAN FELT: Does the delegate, Mrs. Cross, wish to speak on the motion before us?

DELEGATE CROSS: Mr. Chairman, I move that we adopt the original language of Section 2.

CHAIRMAN FELT: The motion has already been made, Mrs. Cross.

The delegate, Mr. Davis.

DELEGATE DAVIS: Mr. Felt, Mr. Chairman, I move to amend Mr. Heliker's motion by placing a period after the word "reclaimed", deleting the words "to as good a condition or use as prior to the disturbance", and leaving the last sentence in. May I speak to the motion.

CHAIRMAN FELT: You may speak on your motion to amend the substitute motion.

DELEGATE DAVIS: Mr. Chairman, I have been very anxious to write the best Constitution that can be written. I couldn't care less who you want to identify me with—whether you want to identify me with the AFL, the CIO, the company, the union, or anyone else. My main concern is to try to make a Constitution that's constitutional. You can't lock words in. I can see how, by locking the words in—"productive and beneficial"—could be as harmful and as weakening as they are strengthening. You could make almost anything to say this is a beneficial use, and the Legislature could not set any standards. I mean, it's a sword that cuts both ways, and both ways it cuts very sorely. The Legislature is going to have to have the liberty as the next 50 years go by. If you get an environmental section—if you get a Constitution that you don't pass, you're not going to have any environmental sections, so you've lost the whole ball of wax. And I can see that you're going to have to leave some flexibility to take the situation as it changes from day to day, from generation to generation. So, I would then move the adoption of—Mr. Heliker and I are really on the same side here except for a few words—as amended. (Laughter)

CHAIRMAN FELT: Does the delegate, Mr. Heliker, wish to speak on the amendment to his—Mr. Heliker, do you wish to speak on the amendment to your substitute motion?

DELEGATE HELIKER: No, I don't.

CHAIRMAN FELT: The delegate, Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. When I voted on this thing this morning, I thought the wording was "to a beneficial or productive use", and the word "and" makes a considerable difference than what is said. I have listened with considerable interest to what has been said, and while I thought my position was very firm with the word "or" in it, I'm not so sure any more. But I am disturbed about one other thing, and I would make a further amendment and then speak to it. I would—

CHAIRMAN FELT: You are making a further amendment?

DELEGATE HABEDANK: Yes.

CHAIRMAN FELT: All right, you can amend the amendment of Mr. Davis.

DELEGATE HABEDANK: I would insert, after the words—just one word is all I'm going to insert—on line 19—

DELEGATE CHAMPOUX: Point of order.

CHAIRMAN FELT: Just a second, Mr. Habedank. A point of order has been raised. What is the point?

DELEGATE CHAMPOUX: I wonder if you can amend an amendment?

CHAIRMAN FELT: Yes, you may.

DELEGATE CHAMPOUX: All right.

DELEGATE HABEDANK: On line 19, after the word "lands"—and I would not object to Style and Drafting changing it—the word "hereafter". I am concerned that in this amendment, the way we have adopted it, we are making it mandatory upon the people of this state to go out and reclaim everything that has been disturbed in the past. And I think, as a practical matter, we want some reasonable reclamation, but I don't think we intend to force ourselves, when companies have been gone and there's no one who can be compelled to do this, to compel the State of Montana to reclaim everything in the future. And therefore I feel the word "hereafter" should be in there, and if the word "reclaimed" is stopped where it is, we then have to depend on the second sentence of this section to implement what we mean.

CHAIRMAN FELT: The delegate, Mrs. Cross.

DELEGATE CROSS: Mr. Chairman, I wonder if Mr. Habedank realizes that by putting that word in there, you automatically eliminate the 40,000 acres in Dawson County which has just been leased. You also eliminate the 80,000 acres in other three counties of eastern Montana which have also been leased for coal.

CHAIRMAN FELT: The delegate, Mr. Aasheim.

DELEGATE AASHEIM: I think we're acting like a bunch of juvenile neophytes. I move a recess.

CHAIRMAN FELT: A motion to recess—would you like to place a time?

DELEGATE AASHEIM: Until tomorrow at 9 o'clock.

CHAIRMAN FELT: Mr. Marshall, the motion, of course, is nondebatable. Do you wish to explain the parliamentary situation?

DELEGATE MURRAY: Well, the problem with recessing is that we don't do it overnight; so if that's the intent of his motion, it's out of order.

DELEGATE AASHEIM: Well, Mr. Chairman, I'll amend my motion to recess till 8 o'clock.

CHAIRMAN FELT: The motion has been made that the committee—

For what purpose does the delegate, Mr. Furlong, rise?

DELEGATE FURLONG: A point of parliamentary information, if I may.

CHAIRMAN FELT: You may ask.

DELEGATE FURLONG: Well, as I read the rule, I understood that when motions or amendments to motions were pending, that those would actually be completed in spite of a—

CHAIRMAN FELT: I think you may be correct. Do you have the reference to the rule number?

DELEGATE FURLONG: No, but I'll accept Mr. Murray's answer for now.

CHAIRMAN FELT: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, the motion to recess is a motion which has priority, and it can be made at any time. Some time back, a few days ago, we got into that situation, and it was then determined that—or it was considered to be that you had to end whatever you were doing in order to make the motion, but that is not the case. The rule does not read that way, and I do not interpret it that way.

CHAIRMAN FELT: The motion to—I was reading in Rule 60, which, while it does not specifically apply to being in Committee of the Whole, may be applicable. It says that when a recess is taken while a question is—No, I'm not sure that would apply.

Mr. Murray.

DELEGATE MURRAY: Well, I don't think we need to read it. You're looking at the right thing, but it doesn't apply to the point in question. The matter that we have to consider, I suppose, is whether we want to recess at this particular stage, knowing we've got to come back and take up the matter of agriculture. And that's why the motion to recess was made previously by Mr. Eskildsen, because we do have other information that we would like to complete tonight. Of course, if the Convention, in its wisdom, decides that it does not wish to do so, why, they can drop another day behind. I submit that we really ought to proceed with our work. As long as we've stayed this long, we ought to continue working.

CHAIRMAN FELT: The motion before the committee is to recess until 8:00 p.m. All in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

DELEGATES: No.

CHAIRMAN FELT: The motion is lost. We—

DELEGATE AASHEIM: Division.

CHAIRMAN FELT: Well, it was pretty firm, Mr. Aasheim. I think you're a little bit late, too, so we'll have to—let's find, Mr. Clerk, exactly—I believe we have a motion to amend to insert the word "hereafter", which is an amendment to the amendment of Mr. Davis. So all we are really concerned with at the moment is the word "hereafter". (Laughter)

The delegate, Mr. Schiltz.

DELEGATE SCHILTZ: Will the gentleman, Mr. Habedank, yield to a question?

DELEGATE HABEDANK: I will.

DELEGATE SCHILTZ: Mr. Habedank. For the record, I did hear you say, and it concerns me, that you just wondered if the State of Montana were going to be doing all this reclaiming, or whatever it was. Is it your understanding that the reclamation called for in Section 2 will be done by the state or by the person who does the disturbing?

DELEGATE HABEDANK: I was in hopes—Mr. Chairman, I was in hopes that the person who does the disturbing would do the reclaiming, but we have many acres of land that have been disturbed in the past in Montana which no one is around to reclaim, and this section is all-inclusive. And while I am answering you, I would like to answer Mrs. Cross, when she says do I realize that there have been 80,000 acres leased and 40,000 acres leased. I do realize this, but they will be disturbed after the leasing, and not before. The fact that they have been leased has nothing to do with their disturbing. That's why I'm talking about the word "hereafter" and why I think it is very important that we do not saddle the people of Montana with a reclamation job that they do not intend to assume.

CHAIRMAN FELT: The question arises on the motion to amend the amendment to insert the word "hereafter". All in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

DELEGATES: No.

CHAIRMAN FELT: The Noes have it. Gentlemen, we now have before us the amendment of Mr. Davis to the substitute motion of Mr. Heliker. The amendment would delete words from the section as it appears originally in your book. The words to be deleted commence on line 20. Putting a—put a period after the word "reclaim" and delete the rest of the sentence. Is that clear?

The delegate, Mr. Martin.

DELEGATE MARTIN: Mr. President, I wonder if I could offer an amendment to the amendment?

CHAIRMAN FELT: You could offer an amendment to the amendment, but you may not offer a substitute motion, as we already have a substitute motion before us. The question now arises on the motion to amend. All in favor will signify by voting Aye.

DELEGATES: Roll call.

CHAIRMAN FELT: A roll call is requested.

Mr. Harper, did you ask for recognition?

DELEGATE HARPER: I think Mr. Martin misunderstood you and thought that you had ruled him out, when in fact you ruled that an amendment to an amendment was possible.

CHAIRMAN FELT: Yes, I thought he had understood it, but do you wish to offer an amendment to the amendment?

DELEGATE MARTIN: My amendment to the amendment would be to delete the section.

CHAIRMAN FELT: That is not an amendment to an amendment. Yes, that's what I'd thought. Mr. Davis' amendment is the question before us, to delete the—well, it—all right, Mr. Clerk, read it.

CLERK HANSON: "Section 2. Reclamation. All lands disturbed by the taking of natural resources must be reclaimed. The condition or use to which the land is to be reclaimed and the method of enforcement of the reclamation must be established by the Legislature." Mr. President.

CHAIRMAN FELT: Yes, that's the condition in which the section would appear, but the motion is a motion to amend by deleting the words "to as good a condition or use as prior to the disturbance".

The delegate, Mr. Cate.

DELEGATE CATE: I'd like to speak on the motion.

CHAIRMAN FELT: You may speak on the motion to amend.

DELEGATE CATE: I would support Mr. Davis' motion. I am as concerned as Mr. Joyce is about putting people out of work. Certainly, it was not my intention to put people out of work. I think that the words "beneficial and—or productive use" are good words, that they should be in there. But Mr. Davis' amendment does permit the Legislature to provide the standards at a later time and could well provide those same standards. So I think to get this thing off our shoulders and on the road, that I would urge the adoption of the section as amended by Mr. Davis.

CHAIRMAN FELT: A roll call has been requested on the motion to amend the substitute motion. We will use the voting machines. All in favor of the amendment will signify by voting Aye; those opposed will vote No. Has every delegate voted?

(No response)

CHAIRMAN FELT: Does any delegate wish to change his vote?

(No response)

CHAIRMAN FELT: If not, the clerk will record the vote.

Aasheim	Aye
Anderson, J.	Aye
Anderson, O.	Nay
Arbanas	Nay
Arness	Absent
Aronow	Aye
Artz	Nay
Ask	Aye
Babcock	Aye
Barnard	Aye
Bates	Absent
Belcher	Aye
Berg	Absent
Berthelson	Absent
Blaylock	Nay
Blend	Nay
Bowman	Aye
Brazier	Aye
Brown	Aye
Bugbee	Aye
Burkhardt	Aye
Cain	Aye
Campbell	Excused
Cate	Aye
Champoux	Nay
Choate	Aye
Conover	Aye
Cross	Nay
Dahood	Aye
Davis	Aye
Delaney	Aye
Driscoll	Aye
Drum	Aye
Eck	Aye
Erdmann	Aye
Eskildsen	Absent
Etchart	Aye
Foster	Aye
Furlong	Nay
Garlington	Aye
Graybill	Absent
Gysler	Aye
Habedank	Nay
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Aye
Harlow	Aye
Harper	Nay
Harrington	Absent
Heliker	Nay
Holland	Absent
Jacobsen	Aye
James	Aye
Johnson	Aye
Joyce	Aye
Kamhoot	Aye
Kelleher	Absent
Leuthold	Nay
Loendorf	Aye
Lorello	Aye
Mahoney	Aye
Mansfield	Aye
Martin	Nay
McCarvel	Aye
McDonough	Nay
McKeon	Absent
McNeil	Nay
Melvin	Aye
Monroe	Nay
Murray	Aye
Noble	Aye
Nutting	Aye
Payne	Excused
Pemberton	Aye
Rebal	Aye
Reichert	Aye
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	Nay
Rygg	Aye
Scanlin	Absent
Schiltz	Nay
Siderius	Nay
Simon	Aye
Skari	Aye
Sparks	Aye
Speer	Aye
Studer	Aye
Sullivan	Aye
Swanberg	Aye
Toole	Aye
Van Buskirk	Aye
Vermillion	Nay
Wagner	Aye
Ward	Aye
Warden	Aye
Wilson	Absent
Woodmansey	Aye
Chairman Felt	Aye

CLERK HANSON: Mr. Chairman, 63 delegates voting Aye, 23 voting No.

CHAIRMAN FELT: The amendment is carried. The question would now arise on the motion of Delegate Heliker to adopt Section 2, as amended. All in favor will signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.

DELEGATES: No.

CHAIRMAN FELT: The Ayes have it. The section has been adopted. Members of the committee, unless there are additional motions to reconsider some section, we are prepared to go to page 13. The clerk will read the history and title of the—

CLERK HANSON: Mr. Martin is standing up.

CHAIRMAN FELT: Mr. Martin.

DELEGATE MARTIN: I move that we reconsider.

CHAIRMAN FELT: Reconsider what?

DELEGATE MARTIN: Section 2.

DELEGATES: You can't.

CHAIRMAN FELT: We've had a motion to reconsider and it's been acted upon, so the motion is out of order.

The gentleman, Mr. Murray. Did you wish to say—

DELEGATE MURRAY: Mr. Chairman, I guess we go to the Agricultural Article. I am going to make the motions and Mr. Gysler is going to explain them, and he will take them one at a time.

CHAIRMAN FELT: All right. The clerk will read the history and title of the proposed Article on Agriculture.

CLERK HANSON: "Be it proposed by the Natural Resources and Agriculture Committee that there be a new Article on Agriculture to read as follows: 'Article. Agriculture.'"

CHAIRMAN FELT: Is that the end, Mr. Clerk? The clerk will read Section 1.

CLERK HANSON: "Section 1. Department of Agriculture. The Legislative Assembly must provide for a Department of Agriculture and enact laws and provide appropriations to protect, enhance and develop all agriculture of the state." Mr. Chairman, Section 1.

CHAIRMAN FELT: The delegate, Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Section 1 of the Agriculture Article of Proposal Number 6, it recommend the same be adopted. And I defer you to Mr. Gysler.

CHAIRMAN FELT: The delegate, Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, I was hoping that we wouldn't hit this section at this time of the day, but I see we did. I will try to keep my comments short. Your committee believes that it is necessary to recognize the largest and most important industry in the state by retaining the constitutional provision for a Department of Agriculture and to require that the Legislature provide appropriations and authorities to adequately protect, enhance and develop the agricultural industry of the state. The new section is intended to remove any reference to agriculture from Article XVIII, Section 1, of our present Constitution and to be the first section of a new article on Agriculture. Now, this section has the endorsement of Mr. Smith, who is the Governor's Agricultural Coordinator. He tells me, in a meeting in Great Falls, I believe around a week ago, that this section has the endorsement of every agricultural group in the State of Montana. In talking with the reorganization people, who had originally recommended that we delete this, and explaining to them why we wanted this section, they agreed wholeheartedly with us. I have gobs of information and so on, but the hour is late and unless someone asks me—wants some of this information, I will defer from putting all of it out. I just want to remind you that this is very important to the agricultural people; and one of the reasons it is—I also have figures on the declining farm population. And so, with saying no more, I move its adoption.

CHAIRMAN FELT: The delegate, Mrs. Bugbee.

DELEGATE BUGBEE: Mr. Gysler, may I ask you a question?

DELEGATE GYSLER: (Inaudible)

DELEGATE BUGBEE: Is this meant to take the place of the 20th department that is now left untaken by the executive reorganization?

DELEGATE GYSLER: Mrs. Bugbee, it is not, because there is, under the present reorganization system, a Department of Agriculture. I might go a little further and explain that in the reorganization, the Department of Agriculture to some extent was kind of stripped because of the provisions of the present Constitution which said, "There shall be a Commissioner of Agriculture, who shall be appointed for a term of four years", and so was locked into the office. We feel this is one of the reasons it was.

DELEGATE BUGBEE: Well, then, I don't really understand, because it says here "a Department of Agriculture". This does not mean that it will come under the 20 departments of the executive then. Where will it go in the Executive Department?—excuse me?

DELEGATE GYSLER: Mrs. Bugbee, it is, at the present time, one of the 20 and would continue to be one of the 20. We are not creating a new one. We are just making sure that the Department of Agriculture will continue, that it will be a viable Department of Agriculture which will be able to meet the needs of the agricultural industry, which is larger by far than the total of the three next-largest industries in this state.

DELEGATE BUGBEE: I am not unsympathetic to the agricultural interests, but I am concerned about executive reorganization, and it seems to me that this is constitutionalizing on top of a constitutional amendment. Mr. Chairman, may I ask Mr. Joyce a question?

CHAIRMAN FELT: Does the gentleman, Mr. Joyce, yield to a question?

DELEGATE JOYCE: I yield.

DELEGATE BUGBEE: Mr. Joyce, would you clear up for me what—you must have—did your Executive Department take this up?

DELEGATE JOYCE: Well, I don't know as that we took it up, per se. We did reenact—or we did recommend to the Convention that the current constitutional amendment, which is Section 7 of the Executive report, be reenacted. I suspect maybe that matter could be handled, Mrs. Bugbee, if it were made clear that the Legislative Assembly must provide for a Department of Agriculture, by saying within one of the 20 departments required by Section 7 of the Executive Report, or something like that.

DELEGATE BUGBEE: In other words, it's already provided for.

DELEGATE JOYCE: Yes, there already is a Department of Agriculture, as I understand it, and it's headed by this—the Commissioner of Labor—or Commissioner of Agriculture—and it is one of the 20 departments that's currently operating.

DELEGATE BUGBEE: So, this is what we call—

CHAIRMAN FELT: Mrs. Bugbee—

DELEGATE BUGBEE: —redundant; excuse me—

CHAIRMAN FELT: Are you continuing to ask questions, or do you wish to speak on the motion, or what?

DELEGATE BUGBEE: Well, I would like to say to Mr. Gysler, I think it's unnecessary—

CHAIRMAN FELT: You may speak.

DELEGATE BUGBEE: —I don't understand it.

CHAIRMAN FELT: The gentleman, Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, I don't believe Mrs. Bugbee understands that this does not change or create anything different from what we presently have in the Constitution. Our present Constitution, Article XVIII, Section 1, says "the Legislative Assembly shall provide for a Department of Agriculture." This proposal deletes the reference to the Commissioner as a 4-year term. But this simply—this suggested article here simply retains the constitutional Department of Agriculture which we have now, and which the Governor has had no trouble putting in as one of his 20 departments under reorganization.

CHAIRMAN FELT: Mrs. Bugbee.

DELEGATE BUGBEE: Mr. McNeil, I do understand.

CHAIRMAN FELT: The delegate, Mrs. Eck.

DELEGATE ECK: Mr. Chairman, I would like to direct a question to Mr. Gysler.

CHAIRMAN FELT: Will Mr. Gysler yield to a question?

DELEGATE GYSLER: I yield.

DELEGATE ECK: Mr. Gysler, how about the present Department of Livestock, or whatever it's called? Is that to be included in the Department of Agriculture, or is that to remain a separate department?

DELEGATE GYSLER: We—In this wording, we have not touched the Department of Livestock, purposely. It was not set up originally as a constitutional office. It is set up as an office under the reorganization act. Really, what we're trying to do with this is to make sure we have one unified voice to speak out for a minority group in the State of Montana.

CHAIRMAN FELT: The motion is to adopt Section 1. Is there any further—

Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I'm a member of the Agricultural Committee and I would like to point out to the delegates here that agriculture produces $640 million in the State of Montana. It's the largest industry there is, and it's certainly entitled to a place in the Constitution. Thank you, Mr. Chairman.

CHAIRMAN FELT: The question now arises on the motion to adopt section—Oh—

The delegate, Mrs. Bates.

DELEGATE BATES: Could we have a recorded vote on this, please?

CHAIRMAN FELT: A roll call vote has been requested. There are sufficient seconds. Those in favor of adopting Section 1 will signify by voting Aye; those opposed will vote No. Has every delegate voted?

(No response)

CHAIRMAN FELT: Does any delegate wish to change his vote?

(No response)

CHAIRMAN FELT: The clerk will record the vote.

Aasheim	Aye
Anderson, J.	Aye
Anderson, O.	Aye
Arbanas	Aye
Arness	Absent
Aronow	Aye
Artz	Aye
Ask	Aye
Babcock	Aye
Barnard	Aye
Bates	Aye
Belcher	Aye
Berg	Aye
Berthelson	Aye
Blaylock	Aye
Blend	Aye
Bowman	Nay
Brazier	Aye
Brown	Absent
Bugbee	Nay
Burkhardt	Aye
Cain	Aye
Campbell	Excused
Cate	Aye
Champoux	Aye
Choate	Absent
Conover	Aye
Cross	Absent
Dahood	Absent
Davis	Aye
Delaney	Aye
Driscoll	Aye
Drum	Aye
Eck	Aye
Erdmann	Aye
Eskildsen	Absent
Etchart	Aye
Foster	Aye
Furlong	Aye
Garlington	Aye
Graybill	Absent
Gysler	Aye
Habedank	Aye
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Aye
Harlow	Aye
Harper	Aye
Harrington	Absent
Heliker	Aye
Holland	Absent
Jacobsen	Absent
James	Aye
Johnson	Aye
Joyce	Aye
Kamhoot	Aye
Kelleher	Absent

Leuthold	Aye
Loendorf	Absent
Lorello	Aye
Mahoney	Aye
Mansfield	Aye
Martin	Aye
McCarvel	Aye
McDonough	Aye
McKeon	Absent
McNeil	Aye
Melvin	Absent
Monroe	Aye
Murray	Aye
Noble	Aye
Nutting	Aye
Payne	Excused
Pemberton	Aye
Rebal	Aye
Reichert	Aye
Robinson	Absent
Roeder	Nay
Rollins	Aye
Romney	Aye
Rygg	Aye
Scanlin	Absent
Schiltz	Aye
Siderius	Aye
Simon	Aye
Skari	Aye
Sparks	Absent
Speer	Nay
Studer	Aye
Sullivan	Aye
Swanberg	Aye
Toole	Aye
Van Buskirk	Aye
Vermillion	Aye
Wagner	Aye
Ward	Aye
Warden	Aye
Wilson	Aye
Woodmansey	Aye
Mr. Chairman	Aye

CLERK HANSON: Mr. Chairman, 77 delegates voting Aye, 4 voting No.

CHAIRMAN FELT: The motion is carried. The clerk will read Section 2.

CLERK HANSON: "Section 2. Right to special levies. A special levy may be made on livestock and on agricultural commodities for the purpose of disease control and indemnification, predator control, livestock inspection and protection, agricultural commodity inspection and protection, livestock and agricultural commodity research and promotion." Mr. Chairman, Section 2.

CHAIRMAN FELT: The delegate, Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move when this committee does rise and report, after having had under consideration Section 2 of the Agriculture Article of Proposal Number 6, it recommend the same be adopted.

CHAIRMAN FELT: The delegate, Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman.

CHAIRMAN FELT: Mr. Gysler, before you proceed, and in the hopes that there might be some saving of time, we do have a proposed amendment which I believe would be suitable for reading now. And you might perhaps address your remarks to your original section and to the potential, at least, amendment. Would the clerk read it.

CLERK HANSON: "Mr. Chairman. I move to amend Section 2 of the Agriculture Article, page 13, line 17, by adding, after the word 'promotion'—quote: 'revenue derived from such levies shall be used solely for the purposes levied.' Signed: Aasheim."

CHAIRMAN FELT: You may proceed, Mr. Gysler.

DELEGATE GYSLER: Thank you, Mr. Chairman. This section revised—is a revision of Article XII, Section 9. Because of the excellent results—of the livestock mill levy, your committee believes all of agriculture should benefit from this method of self-help taxation. However, your committee feels that setting the rate, as was previously done, is a legislative function and to be exercised in response to industry needs. Now, I would like to call to the attention of the delegation that this section in its exact wording is also found in the Revenue and Finance report, as their Section 14. I spoke to Mr. Rygg, the Chairman of that committee, and he said he thought that it properly belonged in our committee and for us to handle it here and if it passed they wouldn't take it up there. I would like to read you their comments. "The proposed language retains the intent of Section 9 regarding livestock mill levies and expands the permissible list of industries and uses for such statewide levy. The levies are not a pure earmark. They are more of a bookkeeping and accounting procedure. The provision, in explicit terms similar to present Section 9, is no longer necessary. The uniformity clause has been removed from the proposed article, and the statewide property tax list has also been deleted. But the importance of agriculture to the Montana economy should not be underestimated; in fact, it should be emphasized. The committee also thought it should encourage taxpayers who are willing to bear the burden of a tax to improve the economic future of their industry." Also, I would like to read to you from Report Number 15 on Taxation and Finance as to why this is needed. On page 140, at the bottom of the page: "The Montana Supreme Court has ruled that the special livestock mill levy allowed in Article XII, Section 9, could not be levied if it were not specifically authorized in the Constitution. The court said: 'Section 9, Article XII, of the Constitution was expressly amended in 1910 whereby a special levy could be made upon livestock exclusively for certain purposes, and without the amendments, such levy could not be made.'" It is for this reason that I move the adoption of this report. As to the proposed amendment by Mr. Aasheim, it is absolutely the intent of this article that the funds be used as is stated in the amendment. I don't really have—if it is felt that this would clarify something for some groups, something like this, I don't suppose there's really any objection, as this is the intent of our article to start with.

CHAIRMAN FELT: The delegate, Mr. Rygg.

DELEGATE RYGG: Mr. Gysler—Mr. Chairman, Mr. Gysler is correct. We did feel it would be just as well to have it in this article. I wonder now, though—I hadn't noticed that heading. It says, "right to special levies". Now, we didn't have that in ours, and part of our explanation says: "The committee also thought it should encourage taxpayers who are willing to bear the burden of a tax to improve economic future in their industry." My question is, by having that as a right to special levies, would that limit just those? I would like to direct that question to Mr. Schiltz.

CHAIRMAN FELT: Would the delegate, Mr. Schiltz, yield to a question?

DELEGATE SCHILTZ: Yes.

DELEGATE RYGG: Would that make any effect in that?

DELEGATE SCHILTZ: We don't consider that the headnote is binding, and if it doesn't fit the material inside the section, why, we rewrite the headnote. So we'll put it almost any way that—

DELEGATE RYGG: As far as it isn't restrictive, we have no objection.

CHAIRMAN FELT: All right.
The delegate, Mr. Champoux.

DELEGATE CHAMPOUX: Would Mr. Gysler yield to a question, please?

CHAIRMAN FELT: Does Mr. Gysler yield?

DELEGATE GYSLER: Certainly.

DELEGATE CHAMPOUX: What is your meaning of the word "indemnification" in your section, please?

DELEGATE GYSLER: Well, wait until I find it again.

DELEGATE CHAMPOUX: It's line 17, page 15, I'm looking at. You looking at—

DELEGATE GYSLER: This is a term that is used by the livestock people, I believe, with their—Could I defer the question to Mr. Conover? He says he knows that.

CHAIRMAN FELT: The delegate, Mr. Conover.

DELEGATE CONOVER: Mr. Champoux, if I'm not mistaken, this is like a disease of—in the cattle—like if you had hoof and mouth or this other control over the state which could eliminate a whole herd of cattle—or under quarantine. This is what this special phrase is put in there for.

CHAIRMAN FELT: Does the delegate—
Mr. Barnard.

DELEGATE BARNARD: Perhaps I—Mr. President, perhaps I could shed a little light on that question. Occasionally diseases of livestock get so serious that, in the public interest, it's necessary to destroy them—or do away with them entirely, and this is an indemnity program for those mandatory cases where, in the public interest, it's necessary to destroy livestock.

CHAIRMAN FELT: The delegate, Mr. Harlow.

DELEGATE HARLOW: I am disturbed now. If they mean by this that they will levy a special levy on livestock sufficient to pay for the livestock killed in a disease epidemic—if we had hoof and mouth disease, it might wipe out half the herds in Montana. The rest of us going to raise enough money to pay out for that half of herds? No, that's the wrong word, I think.

CHAIRMAN FELT: The delegate, Mr. Ward.

DELEGATE WARD: Mr. Chairman, fellow delegates, maybe I could throw a little light on what this term means. Indemnification means that, from these levies, in certain instances where disease control measures are necessary to eradicate a disease such as foot and mouth disease—for instance, if we have this problem in the state, we will have to destroy how many cattle that—I don't know. But this is set up so those owners could pay for those cattle as a disease-control measure. Now, this is the only way it has—it can be done. A number of years ago when tuberculosis was very prevalent in livestock and cattle, the livestock sanitary board tested all the cattle. If they got a reactor, the owner was paid either part [or] in whole for this animal in order to get rid of this disease. And this is what it means. If there are any questions, I'll be more than glad to ask them—answer them about the whole setup, because I know it pretty well.

CHAIRMAN FELT: Does the delegate, Mr. Aasheim, wish to speak on his amendment?

DELEGATE AASHEIM: Mr. Chairman, my amendment speaks for itself, pretty much. I know you're getting hungry and tired, and this is what we're trying to protect from is a hungry Legislature. If they are short of funds, they might see fit to delve into these funds that are not protected. And another reason for the amendment is to give the people who are trying to pay their own way in an industry—they have the confidence to put this money into this fund, and they will then be assured that it will be used for the purposes intended.

CHAIRMAN FELT: The delegate, Mrs. Bugbee.

DELEGATE BUGBEE: I don't understand, and I'd like to ask somebody a question. It seems to me that this section is so that the livestock industry can raise their own money in order to pay for their own indemnification. May I ask if someone would answer that question?

CHAIRMAN FELT: Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman, I'll attempt to answer it. This is true. The other taxpayers in Montana are not asked to contribute anything. This is strictly a mill levy on livestock taxable value. It has been working for these many years, since 1910. This Livestock Building over here was built with those funds, for instance. The Livestock Commission, the Sanitary Board has been operating under this for many, many years. Sometimes they need all the money that they have collected; sometimes they don't. Most of the time, I don't think it all has been spent. Now, on the disease control; you know, the brucellosis program [problem], for instance, has been rampant in Montana for many years, and it's about cleared up now. Now, this hasn't cost the taxpayers—other taxpayers in Montana—any money. This has come from the levy just on the livestock, and this indemnity program. For instance, two years ago down in our country, we got a scabies infection—or the fear of one, I should say, and had to go through a lot of dipping program. When I was a small boy, in the twenties, they shipped up scabies from Texas in the cattle and had to dip all the cattle in Montana, for goodness' sake. It was a frightful expensive thing, but this was all paid for by the people in the livestock industry themselves. Does this answer your question?

CHAIRMAN FELT: The delegate, Mrs. Bugbee.

DELEGATE BUGBEE: Yes, it answers my question. If I and my children and my family wanted to put money in a bank, it would be our business, just the way this is the business of the livestock people. Therefore, my only question, really, is, why should this be constitutionalized? I'm afraid it was a mistake before; it may be a mistake again. Let the livestock people do what they want to do, but it seems to me this is the worst kind of constitutional writing and that we're really not sticking to what we're here for.

CHAIRMAN FELT: This was not a question, but it was a proper statement in debate. Mr. Gysler, did you wish to speak again?

DELEGATE GYSLER: Yes, I did. I would just like to reiterate, Mr. Chairman, what I read from page 140—that the Supreme Court of the State of Montana said—it said, "If you are going to do these things, you have to have it spelled out in the Constitution." And this is why we are doing it—and this is the Supreme Court of the State of Montana.

CHAIRMAN FELT: The question before us is the motion of Delegate Aasheim to add the words at the end of Section 2, "Revenue derived from such levies shall be used solely for the purposes levied." All in favor of the motion to amend, signify by saying Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.
(No response)

CHAIRMAN FELT: The Ayes have it. The question before us now is the—will Mr. Murray restate the motion?

DELEGATE MURRAY: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 2 of the Agriculture Article of Committee Proposal Number 6, it recommend the same be adopted as amended.

CHAIRMAN FELT: The question now—A roll call vote has been requested. There are sufficient seconds. The question before us is to adopt the section as amended. Those in favor of the motion will vote Aye; those opposed will vote No. Has every delegate voted?
(No response)

CHAIRMAN FELT: Does any delegate wish to change his vote?
(No response)

CHAIRMAN FELT: If not, the clerk will record the vote.

Aasheim	Aye
Anderson, J.	Aye
Anderson, O.	Aye
Arbanas	Aye
Arness	Absent
Aronow	Aye
Artz	Aye
Ask	Aye
Babcock	Aye
Barnard	Aye
Bates	Aye
Belcher	Aye
Berg	Aye
Berthelson	Aye
Blaylock	Aye
Blend	Aye
Bowman	Aye
Brazier	Aye
Brown	Absent
Bugbee	Nay
Burkhardt	Aye
Cain	Aye
Campbell	Excused
Cate	Aye
Champoux	Aye
Choate	Absent
Conover	Aye
Cross	Absent
Dahood	Absent
Davis	Aye
Delaney	Aye
Driscoll	Aye
Drum	Aye
Eck	Absent
Erdmann	Aye
Eskildsen	Absent
Etchart	Aye
Foster	Aye
Furlong	Aye
Garlington	Aye
Graybill	Absent
Gysler	Aye
Habedank	Aye
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Aye
Harlow	Aye
Harper	Aye
Harrington	Absent
Heliker	Aye
Holland	Absent
Jacobsen	Aye
James	Aye
Johnson	Aye
Joyce	Aye
Kamhoot	Aye
Kelleher	Absent
Leuthold	Aye
Loendorf	Absent
Lorello	Absent
Mahoney	Aye
Mansfield	Aye
Martin	Aye
McCarvel	Aye

McDonough	Aye
McKeon	Absent
McNeil	Aye
Melvin	Aye
Monroe	Aye
Murray	Aye
Noble	Aye
Nutting	Aye
Payne	Excused
Pemberton	Aye
Rebal	Aye
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Aye
Romney	Aye
Rygg	Absent
Scanlin	Absent
Schiltz	Aye
Siderius	Aye
Simon	Aye
Skari	Aye
Sparks	Aye
Speer	Nay
Studer	Aye
Sullivan	Aye
Swanberg	Aye
Toole	Absent
Van Buskirk	Aye
Vermillion	Aye
Wagner	Aye
Ward	Aye
Warden	Aye
Wilson	Aye
Woodmansey	Aye
Chairman Felt	Aye

CLERK HANSON: Mr. Chairman, 79 delegates voting Aye, 2 voting No.

CHAIRMAN FELT: The motion is carried. The delegate, Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move the committee rise and finally report.

CHAIRMAN FELT: The question now arises on the motion that the committee rise and finally report. All in favor, signify by voting Aye.

DELEGATES: Aye.

CHAIRMAN FELT: Opposed, No.
(No response)

CHAIRMAN FELT: The Ayes have it.

(Vice President Toole in Chair of Convention)

VICE PRESIDENT TOOLE: Convention will be in order.

CLERK HANSON: "March 2, 1972. Mr. President. We, your Committee of the Whole, having had under consideration Report Number 6 of the Committee on Natural Resources and Agriculture, recommend as follows:"

VICE PRESIDENT TOOLE: Does the Convention wish the report read?

DELEGATES: No.

CLERK HANSON: "That the committee rise and finally report. Signed: Felt, Chairman."

VICE PRESIDENT TOOLE: Mr. Murray.

DELEGATE MURRAY: Mr. President. I move the Convention adopt the Committee of the Whole report and refer the Committee Proposal Number 6, containing the articles of Natural Resources and Agriculture, to the Committee on Style and Drafting.

VICE PRESIDENT TOOLE: Mr. Berg.

DELEGATE BERG: I just simply rise to explain that when I voted on Section—subsection 4 of Section 2, being the only No vote, I thought I was voting against its inclusion. I find that everybody voted for deletion. I'm delighted. (Laughter)

VICE PRESIDENT TOOLE: Thank you, Mr. Berg. You've heard the motion that the committee report be adopted and referred to Style and Drafting. All in favor, say Aye.

DELEGATES: Aye.

VICE PRESIDENT TOOLE: Opposed, No.
(No response)

VICE PRESIDENT TOOLE: Motion carried. We'll move to Order of Business Number 11, Committee Announcements and Notices.
(No response)

VICE PRESIDENT TOOLE: If there are none, I'll entertain a motion to adjourn.

DELEGATE MURRAY: Mr. Chairman—Mr. Vice President, I move the Convention adjourn until the hour of 9:00 a.m., March 3, 1972.

VICE PRESIDENT TOOLE: You have heard the motion to adjourn. All in favor, say Aye.

DELEGATES: Aye.

VICE PRESIDENT TOOLE: Opposed, No.

DELEGATES: No. (Laughter)

(Convention adjourned at 6:58 p.m.)

March 3, 1972
9:10 a.m.

Thirty-Seventh Day

Convention Hall
Helena, Montana

VICE PRESIDENT TOOLE: The Convention will come to order. Mr. Arbanas will give the invocation. Please stand.

DELEGATE ARBANAS: Please join with me this morning in the song of creation from the *Book of Daniel.* "Bless the Lord, all you works of the Lord. You heavens, bless the Lord. All you waters above the heavens, bless the Lord. Sun and moon, bless the Lord. Praise and exalt Him above all forever. Stars of heaven, bless the Lord. Every shower and dew, bless the Lord. All you winds, bless the Lord. Praise and exalt Him above all forever. Mountains and hills, bless the Lord. Everything growing from the earth, bless the Lord. You springs, bless the Lord. Praise and exalt Him above all forever. All you beasts, wild and tame, bless the Lord. You sons of men, bless the Lord. Praise and exalt Him above all forever." Amen.

VICE PRESIDENT TOOLE: The clerk will call the roll.

CLERK HANSON: Delegate Ask, Delegate Belcher, Delegate Berg, Delegate Berthelson, Delegate Blaylock, Delegate Brazier, Delegate Brown, Delegate Bugbee, Delegate Cross, Delegate Etchart, Delegate Harper, Delegate Heliker, Delegate Kelleher, Delegate Payne, Delegate Rygg, Delegate Speer, Delegate Kelleher, Delegate Payne, Delegate Speer. Mr. Vice President, may Delegates Arness and Holland be excused? Delegate Payne.

VICE PRESIDENT TOOLE: Mrs. Pemberton.

DELEGATE PEMBERTON: Mr. President, Mrs. Payne is ill.

VICE PRESIDENT TOOLE: Would you repeat that, please. The machine is operating.

CLERK HANSON: Okay. Mrs. Payne is ill. Could she please be excused?

VICE PRESIDENT TOOLE: Yes, we'll arrange for that.

CLERK HANSON: Delegate Payne, excused.

Aasheim	Present
Anderson, J.	Present
Anderson, O.	Present
Arbanas	Present
Arness	Excused
Aronow	Present
Artz	Present
Ask	Present
Babcock	Present
Barnard	Present
Bates	Absent
Belcher	Present
Berg	Present
Berthelson	Present
Blaylock	Present
Blend	Present
Bowman	Present
Brazier	Present
Brown	Present
Bugbee	Present
Burkhardt	Present
Cain	Present
Campbell	Present
Cate	Present
Champoux	Present
Choate	Present
Conover	Present
Cross	Present
Dahood	Present
Davis	Present
Delaney	Present
Driscoll	Present
Drum	Present
Eck	Present
Erdmann	Present
Eskildsen	Present
Etchart	Present
Felt	Present
Foster	Present
Furlong	Present
Garlington	Present
Graybill	Present
Gysler	Present
Habedank	Present
Hanson, R.S.	Present
Hanson, R	Present
Harbaugh	Present
Harlow	Present
Harper	Present
Harrington	Present
Heliker	Present
Holland	Excused
Jacobsen	Present
James	Present
Johnson	Present

Joyce	Present
Kamhoot	Present
Kelleher	Absent
Leuthold	Present
Loendorf	Present
Lorello	Present
Mahoney	Present
Mansfield	Present
Martin	Present
McCarvel	Present
McDonough	Present
McKeon	Present
McNeil	Present
Melvin	Present
Monroe	Present
Murray	Present
Noble	Present
Nutting	Present
Payne	Excused
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Absent
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present

CLERK HANSON: 96 delegates present, 3 excused, 1 absent.

VICE PRESIDENT TOOLE: Reports of Standing Committees, Order of Business Number 1.

CLERK HANSON: None.

VICE PRESIDENT TOOLE: I would like to make an announcement there. There will be a report—a meeting of the Committee on Administration tomorrow morning at 8 o'clock in the Rules Committee room. That's Administration, tomorrow morning at 8 o'clock, in the Rules Committee room.

Mr. Dahood.

DELEGATE DAHOOD: Mr. President. The Bill of Rights Committee will meet tomorrow morning at 8 o'clock in the Bill of Rights Committee room.

VICE PRESIDENT TOOLE: Order of Business Number 2, Reports of Select Committees.

CLERK HANSON: None.

VICE PRESIDENT TOOLE: Number 3, Communications.

CLERK HANSON: None.

VICE PRESIDENT TOOLE: Number 4.

CLERK HANSON: None, sir.

VICE PRESIDENT TOOLE: —5.

CLERK HANSON: None.

VICE PRESIDENT TOOLE: —6.

CLERK HANSON: None.

VICE PRESIDENT TOOLE: Number 7, Motions and Resolutions.

CLERK HANSON: None, sir.

VICE PRESIDENT TOOLE: Number 8, Unfinished Business.

Mr. Graybill.

DELEGATE GRAYBILL: Members of the Convention. It's the second Friday again, and I must report on the budget. And you all have before you, on your desks, copies of the budget—you should have; Mr. Gysler doesn't. Now, the first thing I want to mention is what I mentioned yesterday, and I'll just do it briefly. But you understand that we have not adjusted the budget upward to include any federal funds yet because the federal funds are not, in fact, in hand. However, Mr. Baucus spoke with me again this morning. And they sent some more paperwork in yesterday, and everyone says everything's okay. But we haven't got it back in writing, and we have not signed the contract yet with HUD. When we do that, which I anticipate will be done within the next two-week period, we will add that money back into the budget here, and it will help us especially on the public information end. But at the moment, this budget does not reflect the HUD grant, because it isn't signed up for yet. Now, on the expenses to date, the salaries are right on line. I might tell you that, based on the 9-week Convention, we have 20.84 percent of our time left, and that's just about how much we have left of the salaries. On the staff wages, we only have 18 percent left, but as you know, we're phasing out staff, and I think the next 2-week period will clearly put us back into range on the staff, so we won't be in any trouble there either. You'll recall that, on employee benefits, one of the first things we did after the first 2-week period was add some money in there. Since we added that money in, we've always been in good shape, and we'll have no trouble there. Stationery and supplies; fortunately, I think we're ahead of the game. Obviously, we won't need to spend the other $1,200 on stationery. On flat printing, we may, in fact, spend it, because it's a matter of how we budget that money. We are now getting bids and contracting—or getting ready to contract—on the voter information pamphlet. And one of the things we want to do is try to get some color on that pamphlet and make it an attractive document. And it may be that we'll use that flat printing money—move it into public information and use that flat printing money to make a little better document. In other words, we're a little ahead in the stationery and supplies area. Communications; it appears that we're ahead, but this may be deceptive. We have $3,400 unencumbered of our postage, but you must recall that we changed our method of sending the material out to most of the people that we designated. We're only making three big mailings, and there's a big mailing due with a lot of heavy material now, after these committee reports came out, and for the Style and Drafting reports. So we really have two mailings left to come out of that postage. So I think that perhaps, while we're not in real trouble, we're not actually ahead of the game in postage. Travel's no problem. Contracted services; we're running pretty good on the printing, and the printing is within our budgeted requirements. And I had some checks run yesterday because of an inquiry. You understand, we own the printshop at the moment and we sell printing to the rest of the Capitol. I can report that the salaries in the Printing Department so far for the 2-week period—or maybe for the month period—were three thousand bucks. Paper was 500, but we made a profit of $1,400 because we get 50 percent of the printing we do for other state agencies. So we ended up with only a $2,100 net figure there, because the Highway and the Attorney General and all have to buy a little printing once in awhile and we get half of it. Now, we are going to watch this, because it does involve labor costs, and perhaps the last week we will—or the last few days, we'll switch out of that mode. And when we're through with printing our Style and Drafting reports, we'll probably switch out of that. But the printing has worked out pretty well with the purchase of the printshop down there. The special expense is—the per diem—is just about on line. We're ahead of ourselves on consultants, so that looks good at the moment. Commission expense is an item that we explained before; it hasn't changed any. That's—what that amounts to is deficit for the Commission that we paid out of our own pocket. There is, of course, some other deficit that nobody has paid yet. Public information—we phased out the film project and, you remember, we then cut the 5,000 that balanced the budget last time out of public information. As I say, if we get the federal grant, we'll be in good shape because we will be able to add some of that money back into public information. All in all, I would say that it looks, today—and I hestitate to say this until we finish Revenue and Finance—like we might be able to get through pretty handily, moneywise. But I still am going to try and keep you to the March 18th schedule. If we end up anytime around March 18th, we'll be in good shape. If we end up a week later, it will be touch and go. So—and the difference is whether we have enough money to adequately pay for a good brochure to the public, and to adequately educate. So I am hoping that we can get through around the 18th, and if we do, we're in good shape. Are there any questions? When we sell the printshop back, we won't make a profit. What we really have done is—you see, we're paying the salaries for everybody down there and we're splitting that 50-50 with the Administration Department; but we are also given half of the income from nonconvention printing. And the point is that we made $1,400 while we spent 3,000 for the labor. So our labor really ended up only costing us half as much as it would have if—and secondly, we are also doing it for cost. If we had done it the other way, the Administration Department would have made a little profit. Okay, thank you. Oh, Mrs—address the Chair, and I'm sure he'll let you have a question.

DELEGATE BOWMAN: Mr. Chairman,

could I ask Mr. Graybill a question, please?

VICE PRESIDENT TOOLE: Yes, Mr. Graybill will yield, I'm sure.

DELEGATE GRAYBILL: Yes.

DELEGATE BOWMAN: Mr. Graybill, is there an allocation to print the journal in this budget?

DELEGATE GRAYBILL: There is no allocation to print in the sense of printing the journal. The court reporter, of course, comes up with a typed copy. And I did skip over that. We did some calculations yesterday which indicate that we will probably be able to come out within the budget figures on court reporter if we end up around the 18th, too. The court reporter is—that's the—you know, we had to raise that to 15,000 last 2 weeks. And that—the 8,000 there is accrued; it is not all paid out, but that's what's accrued. But assuming that we end up sometime about two weeks from now, we think we'll get by for the court reporter price. But, Mrs. Bowman, that does not include printing any copies. Now, we have taken steps in the last two weeks, and we are having the printshop duplicate—I think it's 10 copies of the journal. Now, we don't intend to duplicate a hundred, but we're duplicating 10. I don't want to have one get lost like it did in 1864, and then not have it. We're duplicating 10, which would give us enough so that we could hand a couple to a printer. But this Convention does not have any money, and never did have any anticipated, to print, in the sense of making into a book, the journal. If the Constitution passes, presumably the Legislature would do that, so that the matter would be available. If it didn't pass, probably nobody would bother to print it.

VICE PRESIDENT TOOLE: Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman. Leo, we find quite a congestion out here on this one WATT line. Would it throw our budget too much out of balance if we were to reintroduce two of those other two WATT lines?

DELEGATE GRAYBILL: I will look into the fact. I'd rather not buy a whole WATTs line. That costs us about seven or eight hundred dollars, but I'll see if we can't get you another outlet for it. What we did is—we stayed with—we eliminated one of our WATTs lines, which cut our WATTs cost in half, but we are still on the state's 20—it's now 21—it used to be 22 with us in, and now its 21—line WATTs system. I will investigate whether or not we can get another outlet or two. Now, some of you know—and Mr. Toole and I have tried to let any of you who have emergency calls or important calls use our lines. There's one in our office, there's one in the hall here, and there's one in Public Information. And you're certainly free to use them whenever you need to. But I'll see if we can't get another outlet, Mags, onto the 21-line state system. I'll talk about that with the phone company.

VICE PRESIDENT TOOLE: Any further questions about the budget? The Chair will entertain a motion that the budget be accepted.
Mr. Murray.

DELEGATE MURRAY: Mr. Vice President, I move that the Convention accept and adopt the budget report of the President of the Convention.

VICE PRESIDENT TOOLE: You've heard the motion. All in favor, say Aye.

DELEGATES: Aye.

VICE PRESIDENT TOOLE: Opposed, No.
(No response)

VICE PRESIDENT TOOLE: Motion carried. Order of Business Number 9, Special Orders.

CLERK HANSON: None.

VICE PRESIDENT TOOLE: Order of Business Number 10, General Orders of the Day.
Mr. Graybill.

DELEGATE MURRAY: Mr. Vice President, I move that the Convention resolve itself into Committee of the Whole for consideration of business under General Orders.

VICE PRESIDENT TOOLE: You've heard the motion. All in favor, say Aye.

DELEGATES: Aye.

VICE PRESIDENT TOOLE: Opposed, No.
(No response)

VICE PRESIDENT TOOLE: Motion carried.

(Committee of the Whole Chairmanship assumed by President Graybill)

CLERK HANSON: March 3, 1972. The following committee proposals are now on General Orders: Revenue and Finance, Bill of Rights, Education, Public Health, Local Government, General Government, Style and Drafting Report Number 3.

CHAIRMAN GRAYBILL: First of all, I'd like to say that I'm gratified to hear that you finished Natural Resources in such good shape last night. I think it—I think we had some interesting and thorough debates on important topics, and it does prove we can get through and still have the debates. It's my understanding that on Revenue and Finance, we'll start right at the top and go down; but before we do that, Mr. Rygg wants to make a statement. At this time, Sterling, why don't you take the floor and make your statement, and then we'll start down the line?

DELEGATE RYGG: Thank you, Mr. Chairman. I would like to give a little synopsis of our committee report, in case all of you haven't read it. We were given Articles XII, XIII and XXI, which had a total of 42 sections. You will note our proposal has only 14 sections, so we have—

CHAIRMAN GRAYBILL: Sterling, will you hold the mike a little closer.

DELEGATE RYGG: —so we have eliminated some sections, condensed some, and added some new ones. Article XXI, consisting of 18 sections, was condensed into our Section 13. This is the trust and legacy fund, which really never has existed, and had not public school funds and other land grant funds been added in 1938, the whole article would have been useless. The Education Committee also had this article, and we have tried to incorporate their thinking in our majority report. We do have a minority report on this section. Article XIII had to do with public debt, and most of the six sections in this article are now contained in our Sections—our proposed Sections 1, 8 and 11. So, you can see that most of our work was done on Section 12. Now, the first sentence of Section 11 became our new Section 1 and replaced Section 1 (A), and Section 1—and Section 1 (A). Section 1 (B), the antidiversion amendment, with modification, became our proposed Section 6. Section 2 is covered in our proposed Section 5, and we have a minority report on this. I might say we had only two minority reports, and had not Morris Driscoll, out of a courtesy, signed these two minority reports, we wouldn't have had any. So, the committee was fairly solid on its thinking. The gross proceeds tax, old Section 3, was eliminated from this proposed article. Section 4 was also eliminated and is partly covered by Local Government's proposal. Section 5 is covered in our proposed Section 4. Section 6 and 7 are covered in our Section 2, the surrender clause. Section 8 is guaranteed by our federal Constitution, so we eliminated it. Section 9 is covered in our Section 14 and also in Section 3. Section 10 is eliminated as it was covered in the new Legislative Article XVIII, I think it was, the other evening, and it came from Article V, Section 5—Section 34, I think it was—this also partially covered in our proposed Section 12. Section 11 is—the first sentence is now our proposed Section 1, and the uniformity clause was eliminated because it really has been a nebulous thing and is sort of covered in the 14th Amendment. Section 12 is covered in our proposed Section 9. Section 13 is covered in the Legislative Article, Section 18, and partly in our Section 12. Section 14 is covered in our Section 12 to a degree. Sections 15 and 16 have been replaced with our proposed Sections 3 and 7. Section 17 was eliminated, as we thought it was no longer needed. Section 18 was also eliminated, as we felt it was not needed. We heard testimony, some hundred and twenty-some people. We didn't have many delegate proposals. We had a few, and we considered them and used part of them. I think this committee has worked on this proposal with a very progressive spirit. We were told by a couple of people who gave testimony that all we should do is write the power to tax, put a no-surrender clause in, and go on home. And I suppose this would have been about equal to Connecticut's, Iowa's, and a couple other states. But we felt that even though the state has the inherent power to tax, we should provide some guidelines for our Legislature. The committee felt that this document should be flexible enough so that future Legislatures would not be restricted for many years to come. We do ask the Convention to look at this proposal with this same farsightedness. In some of these sections, we feel we have made some giant strides for moving into the future, and we ask you to consider them in this same light. While the committee is not in complete accord with everything in this proposal, the consensus is that we have a rather forward-looking document that will meet the challenge of change in the future, and we are asking this Convention to meet that challenge. I would also take a little time and tell you a little bit about this committee, if I may. It's a pretty quiet bunch. You don't see them talking very much on the floor. I don't even know if you know who is on our committee. Geographically, we cover the state pretty well. We have a man from Conrad, Great Falls, Nashua, Glendive, Billings, and then we sneak into that invisible fence and pick someone out from Butte, America. We go to Anaconda, and then we have two from Kalispell. As far as occupations are concerned, we have two school teachers—one is a regular high school teacher with journalism and a few other degrees; one is a vo-tech teacher. We have two attorneys; one experienced and one with the great exuberance of youth. We have two businessmen; one affluent and one not. We have one farmer, one accountant, and one banker. And I take the time of telling you this because I want you to know that, really, in this group, I don't think you could feel that there was anyone in the whole group with a special interest. I want you to know that this group had what they thought was the good of Montana—and I know you all did this—but, really, I don't think there were any that were wrapped up in any one subject. We really are trying to put together a proposal which we think will be something the future of Montana needs. Now, I learned a long time ago that whenever I start doing anything—if I'm going to do anything, I have to have on my side a banker, a tax man, and a lawyer. And it happens that this committee did provide these things. However, the banker hasn't decided to back me on this, and at the moment, I don't need a tax man. But this morning I'm going to need the counsel. So I would tell the Convention that I will probably try to handle the easy questions, and as soon as we have something difficult or of a technical nature, I will be calling on Mr. McDonough, or you can call on him, because, admittedly, he is the brains of our committee. So with that, Mr. Chairman, I believe you can say the Mitchell Gang may not be prepared, but they're ready.

CHAIRMAN GRAYBILL: Very well. Will the clerk please read the title of the proposal and then Section 1.

CLERK HANSON: "Montana Constitutional Convention, Revenue and Finance Committee Proposal on Constitutional Revision Number 3. Date reported: February 18th, 1972; Sterling Rygg, Chairman; Morris Driscoll, Vice Chairman. Be it proposed by the Revenue and Finance Committee that there be a new article on Revenue and Finance to read as follows: 'Revenue and Finance. Section 1. Public purpose. Taxes shall be levied by general laws for public purposes.'" Mr. Chairman, Section 1.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman. I move that when this committee does rise and report after having had under consideration Section 1 of Proposal 7, that it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Section 1 is a very simple and general statement which provides the Legislature the necessary leeway to impose taxes as they see fit. When we were discussing the article, of course, we went through many constitutions, as all of you did, and we came up with one of the recommendations here from the Revenue Department, which read: "The necessary revenue for the support and maintenance of the state shall be provided by the Legislative Assembly, which shall levy taxes by general laws for public purposes only." As I mentioned, we did take out the entire section and we put in the first sentence of Section 11, which is what is now our Section 1. Mr. Felt had a proposal in our committee, and he met with our committee. And he had the other half of this sentence in his, and he had suggested that perhaps we should put the two of them in. I want to say that we have a high regard for Mr. Felt and we did not just discard this without thinking about it. We considered it considerably. But we felt that, really, the Legislature is the branch which does raise the money, so we didn't think we needed more than that sentence to do it. We did think it was well, however, to emphasize two protection requirements—one, that taxes should be raised by general laws and only for public purposes. By doing what we have done, we do not force the Legislature to place a tax on all property. We did remove the part that said "all property". So now the Legislature can decide what they want to tax. We did remove the section which indicated income tax, but that has no bearing at all on what they can tax. Naturally, income tax is still in there and taxable. Much testimony was given to us that household goods are not a good tax base, but because the Constitution has required it for the past 80 years, this property must be assessed and the taxes must be collected. Testimony also revealed to us that this cost of assessing and collecting this type of tax, [in] many cases, was just about as great as the amount of the tax. Further-more, it was brought out that many taxpayers are reluctant to sign the appraiser's statement, which says this is a true statement, and they feel that maybe they are committing perjury when they do this. Now, by doing—by taking out the former Section 1, we have also eliminated the uniformity clause. And it is probably a desirable thing, but under the present Constitution it's been unattainable. Various classes of property have been created in order to circumvent this provision. And I think here would be the time to mention it, because Section 17 of the present Constitution defines property. We did delete it, because we didn't say that all property must be taxed. So our thinking now is that the Legislature is now free to tax whatever form or class of property it so desires and they can define it at the time they make the law. Again I want to emphasize that in our proposal, we're not telling the Legislature what to do, but we are simply removing the restrictions which in the past have made assessing of certain properties very difficult and unequal. I recommend the adoption of this article. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there discussion? Very well. Members of the committee, you have before you, on the recommendation of Mr. Rygg that when this committee does arise and report, after having had under consideration Section 1 of article—of the Revenue and Finance Article Proposal 7, that the same be recommended for adoption. All in favor, say Aye. Oh, just a moment.

Mr. Aasheim.

DELEGATE AASHEIM: Will Mr. Rygg yield to a question?

CHAIRMAN GRAYBILL: Mr. Rygg, will you yield?

DELEGATE RYGG: Yes.

DELEGATE AASHEIM: Mr. Rygg. Now, we—last night we put a special levy on agricultural products and livestock. It'll be impossible, under this Section 1, to do that by the Legislature. Even if a group should ask to do so, would you say—say, if the poultry growers would now ask for—or, say, the horticulturists would like to have a special levy for fruit trees, they couldn't do it because it wouldn't be a general law?

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I think they could do it. I think the Legislature could let them do the same as was done in that section which you passed last night. But—Mr. Chairman, maybe I don't understand the question.

DELEGATE AASHEIM: Well, your—Mr. Chairman, taxes shall be levied by general laws. A tax on horticulture growers wouldn't be a general tax, would it? That would be a special tax.

DELEGATE RYGG: Yes, that would be a special tax.

DELEGATE AASHEIM: In other words—Mr. Chairman—

CHAIRMAN GRAYBILL: Mr. Aasheim—

DELEGATE AASHEIM: —according to the Constitution, then, it would be illegal?

DELEGATE RYGG: No.

CHAIRMAN GRAYBILL: Mr. Aasheim, the Chair might be able to help you on that. It would seem to me that the language means that if you have a tax on fruit trees or something, it has to be a tax that applies to all fruit trees anywhere in the state. You can't have—you can have a tax on a special subject, but it has to be broadly based across the state; it can't be on one fellow's group of trees. Mr. Rygg nods in the affirmative, Mr. Aasheim. All right. Now, members of the committee, you have before you for your consideration Section 1 of the Revenue and Finance Article, upon Mr. Rygg's recommendation that when this committee does arise and report that it recommend the same to be adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, Nay.

(No response)

CHAIRMAN GRAYBILL: It's adopted. Will the clerk read Number 2.

CLERK HANSON: "Section 2. Surrender clause. The power of taxation shall never be surrendered, suspended or contracted away." Mr. Chairman, Section 2.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 2 of Proposal Number 7, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: This is a short surrender clause. Most state constitutions have some sort of surrender clause. The newer ones have it much in this shortened form. Actually our present Constitution says about the same thing, but it takes up two sections, Section 6 and 7. Of course, the power of taxation is the most important power a governmental body possesses, and it is equally important that this power never be treated lightly or bargained away. This section does apply to all government units, not just state governments. It does not imply that the state cannot delegate the taxing authority, by constitutional mandate or statutory law, to local governments. Due to the fact that local governments are merely subdivisions of the state government, this could not be considered relinquishing of taxing power. One reason for having this clause is to prevent the state from ever giving special privileges to any private enterprise. This section is not meant to prevent the state from exempting certain classes of property from taxation. I know that after the Romney hearing, Mr. Ask was concerned about the transfer of this power on local governments. So our committee did give this a great deal of consideration before we did conclude that only this one sentence was necessary. Now, oddly enough, it seems that Illinois and Michigan were somehow able to get this same language in their constitutions. I believe this section should be included in our Constitution. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. Is there discussion? Members of the committee, you have before you, on the recommendation of Mr. Rygg that when this committee does arise and report, after having under consideration Section 2 of the Revenue and Finance Proposal, that the same be adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Will the clerk read Number 3.

CLERK HANSON: "Section 3. Property tax administration. Property which is to be taxed shall be appraised, assessed and equalized by the state in the manner prescribed by law." Mr. Chairman, Section 3.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 3 of Proposal Number 7, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: This section doesn't have many more words than the first two sections, but its implementation would open the door to a whole new concept of taxation. Now, the rationale pretty much tells what could be done if this committee's progressive thinking were brought to realization. However, it still would be the Legislature's prerogative to decide how far-reaching it wants the effects of the change to be. Now, in coming to writing a section like this, certainly it didn't come out of thin air. Much consideration was given to it. And I suppose the Serrano-Priest case and the subsequent findings in other states brought out the thinking of this committee, although I would have to say that during the testimony, too, we heard that there were many people who thought tax equalization was not all over Montana. But it did appear to us that, in the near future, Montana, along with all the other states, will have to deal with the issue of equal education for its youth. The only way to accomplish this will be to have statewide financing of education, and the first step in this process is to have a statewide system of taxation, which must start with a statewide system of appraising, assessing and equalizing. We feel that this section would enable the Legislature to implement such a system. It is a duty of the Legislative branch to define the tax administration system and the duty of the Executive branch to administer that system. Let us consider, for a moment, our present system of taxation. Currently each county has its own administrating personnel. Now, if there were no need for statewide taxes and if our educational system was not funded at all by property tax, this method would be adequate. However, because much of the education equality is based on property tax, it is necessary that we change from an individual county system to a statewide system. It is true that at the present time, the State Board of Equalization tries to insure the ratio of sales price to assessed valuation on real property. However, all counties do not comply with the State Board's directives and, hence, equality is not reached. There is a problem of inequities within districts as well as between counties. Many taxpayers do not complain so much about their own taxes, but the fact that their neighbor's taxes may be lower they find very disturbing. It's impossible to have equitable taxation until statewide assessing and appraising has been achieved. I mentioned before the implications of the Serrano-Priest case will probably soon force Montana to use statewide financing for schools. Now, the committee is not against the Board of Equalization or the County Commissioners or the Assessors, as has been implied by many. In no way can we visualize the elimination of either the Assessors or the County Commissioners. Many counties now have Appraisal Boards, and yet the Assessor is busy running his office. The only difference here, if our proposal were to become a reality, would be that this Appraising Board would have to come from the state. Now, Sections 15 and 16 of the present Constitution do provide that the local Board of Equalization be comprised of the County Commissioners. And our proposal could eliminate this one function from the County Commissioners, but that would be all. It is true that this section would not call for a Board of Equalization in the Constitution; however, it does not prevent the Legislature from retaining this board and using them as a State Appraisal Board. We do, however, envision some problems with retaining it in its present form. Our thinking is that a tax administration system should be administered by the Executive Department, and it is true that this board is appointed by the Governor. It is also true that the Governor does not control the board. The fact that they answer to nobody, they have no checks, is indeed a problem. We feel they should be directly answerable to the Governor, probably under the Department of Revenue and, if we are to retain them, probably should be appointed from geographical districts. Now, there is an amendment on your desks that would delete our proposed Section 3 and retain present Articles XV and XVI, or at least the basic functions of these sections. Now, if this amendment passes, we feel it will be very difficult for the state to attain equality of taxation on a statewide basis which will provide statewide financing for school systems. Now, we realize it's hard to adjust to change. The committee feels that change in this area is necessary to meet the challenge of the future, and we do recommend that we base this challenge and adopt this section as a part of our new Constitution. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman. I have an amendment for the clerk to read, if he would, please.

CHAIRMAN GRAYBILL: Will the clerk please read Mr. Eskildsen's amendment.

CLERK HANSON: "Mr. Chairman. I move to amend Section 3, lines 11 through 13, page 11, of the Revenue and Finance Committee proposal by deleting it in its entirety and inserting in lieu thereof the following new material: 'Section 3. The Board of County Commissioners of each county shall constitute the County Board of Equalization. The duties of such board shall be to adjust and equalize the valuation of taxable property within their respective counties. The State Board of Equalization shall be composed of three members, who shall be appointed by the Governor, by and with the advice and consent of the Senate. The members shall have overlapping 6-years terms, with each member holding office until his successor shall have been elected and qualified. The members shall be so selected that the board will not be composed of more than two persons who are affiliated with the same political party or organization. Provided, further, that each member shall devote his entire time to the duties of the office and shall not serve on or under any committee of any political party or organization or take part, either directly or indirectly, in any political campaign in the interests of any political party or organization or candidate for office. The State Board of Equalization shall increase, decrease, or otherwise adjust the assessed valuation of property established by the taxing jurisdiction to insure a fair, just and equitable valuation of all taxable property between the different classes of property and between individual taxpayers. The State Board of Equalization shall annually assess the property of all railroads, telegraph, telephone, electric power and transmission lines, and all similar property constituting a single and continuous property operated in more than one county in the state, and the same shall be apportioned to the counties, cities, towns, and school districts in which such property is located, in such proportion as will fairly represent the valuation for assessment within each such county, using commonly recognized methods of apportioning as shall be just and equitable, and shall also have such other powers and perform such other duties relating to taxation as may be prescribed by law." Mr. Chairman. "Signed: by Eskildsen."

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, I so move. First, I would like to thank the committee for the hard work they've done, because they have worked hard on this.

CHAIRMAN GRAYBILL: There's a question, Mr. Eskildsen. The point is, Mr. Eskildsen has moved this as an amendment to Section 3 of the Taxation—of the Revenue and Finance Article, and the Chair allows the amendment.
Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman. I would like to thank the committee for the hard work they've done. As we all know, each committee has put in much time and effort to come out with the proposals they thought best. It's just one of those things that I have a different feeling than what the committee does on what is best for the State of Montana. And because there was no way for us to compromise, which the committee tried, I talked to different committee members and we tried to find out a compromise—tried to reach one. It's just one of those basic differences. And because of that reason, I add this amendment. I would like to think that I could stand here and, in two or three minutes, explain the whole tax program for the State of Montana. This is very complex, so I hope that you'll bear with me while I give you my reasons for submitting this amendment. Section 3 provides that property which is to be taxed shall be assessed, appraised and equalized by the state—this is in your Section 3. "In the manner prescribed by law" simply refers to the method that the state shall appraise, assess and equalize property. This in no way can be read to mean that the Counties' Assessors or County Boards of Equalization or the State Board of Equalization will ever again be involved in the assessment of property. The Revenue and Finance Committee has referred to the state-level system, which simply supports my remarks that the counties will not be involved unless in a subordinate, clerical position to a State Administrator. Now, it has been said that Section 3 doesn't change anything. I submit to you that no one can second-guess what any future Legislature will do. If we delete Section 15 and go with Section 3, I can assure you that in every session, there will be change. I can see this thing working real well. One session of cowpunchers will come in and have a great deal of influence over the Legislature, and they'll come out of the Legislature smelling like a rose. And here we go, up and down and up and down in our tax program. And you can bet the next session, the timber people or some other group will be in. As they approach the Legislature, they will be in with their axes in their hands, and I can assure you they will come out of the next session with all the pine cones. Again, let me repeat. You will start a process of fluctuation in equalization—equalizing programs that we now have that will cause vibrations over the whole state. And what has been accomplished in the last 50 years, but mostly in the last 15, will be the reclassification program would be lost. If you don't believe me, ask the committee if they can guarantee there will be no change in the assessment or equalization program. Because I can assure you that no one in this room can give you that assurance. Without continuity of a Board of Equalization, you will lose stability in our entire tax program. Are we going to have a whole program to replace a State Board of Equalization? Is there going to be one man appointed by the Governor, to serve at his pleasure? I will tell you this is going to be the biggest boondoggle that you have ever seen. If you pass Section 3, I can assure you I will be the man who will be after the job. A few years of assessing railroads and public utilities and satisfying farmers and timber people—and other special interests are just my dear old friends. I could retire in four years. That's all I'd need. And as soon—and as honest a man as I am, I couldn't help but be able to retire, as it would just come to me; that for sure. I wouldn't have to ask for it. You talk about letters coming over the transit [transom]; well, they would be coming under the door if you establish a tax department such as this. I strongly urge that, rather than abolish the State Board of Equalization, that we put into the Constitution that it shall continue to be the head of the Department of Revenue, as the statutes now provide. Under executive reorganization, the Legislature made sure that one man wasn't going to do it all. They left the board in as the head of the department. If we do this, it would lessen my desire to attempt to get the job, because somebody is going to be watching. What is it the State Board of Equalization and County Commissioners are doing that is so bad? Whatever it is, can you assure me that this new, streamlined, and independent and efficient whatever it is we're going to have will do anything different and will be able to do as good? Now, if we are going to keep the same system we have, then we are going to have to appoint this—then are we going to have this appointee by the Governor, a qualified appointment? When I talk about a person qualified, then we get into the $25,000-a-year bracket. Is that all we are going to do—add one more man to watch the three do their job? I submit to you that if there is anything wrong with the State Board of Equalization now, it could be corrected by a decent appropriation, so that they could do their job right. Now while I'm on the subject, if you would want the ideal tax program and the ideal person to run it and to make sure that everybody was assessed equally—farmers, city dwellers, railroad, timber, et cetera—then the ideal person would be appointed by the Governor or the Legislature, or picked by the Judiciary or someplace, and he would be made a dictator that could not be replaced or removed. His word would be final, and there would be no appeals. Then, my fellow delegates, you would have a situation where it would be possible that everyone would be taxed the same. I tell you, this isn't the American way, and this isn't my way. I believe in appointments and I believe in elections, but I believe that people should always have recourse. And that is the reason we have democracy, and that is the reason our republic works, and that is the reason I don't want a dictator. And it is also the reason I want my amendment to Section 3—thus assuring the people of Montana that they will have a voice in electing their County Commissioners and County Assessors and are able to appeal to their County Boards and to our State Board of Equalization and on into courts, if need be. Our present system is local county rights, and if we go to Section 3, we will have abolished local rights and we have done to the counties what the federal government is and has been doing to the states. We have created a state centralized system, leaving the counties no say whatever in their property tax assessment. Our Legislature has grappled with this problem. On January 16th, 1963, a special committee was appointed to report to the 38th Legislative Assembly on the reclassification program. In regard to those counties that had failed to complete the program, they stated, and this is—I quote: "A mere directive that the uncompleted work be done, with an authorization of the State Board of Equalization to demand that the County Attorneys prosecute ouster proceedings against county officials, obviously is not adequate means of obtaining needed cooperation. That, in general, was the method contemplated by the 1957 law."—end of quote. A dispute arose as to whether the State Board had certain authorities over county officials. A Senate committee was appointed February 5, 1965, for the purpose of studying the activities of the State Board of Equalization and its relation with County Commissioners Association and the County Assessors Association. This committee was chaired by Senator P. J. Gilfeather, while the County Commissioners were represented through their attorney, Mr. William F. Crowley. The County Assessors joined with the County Commissioners, and the State Board was represented by William Douglas, attorney for the Board. The net result of this meeting was signed agreement that the officials would cooperate with one another and interchange ideas in open communication in order that this program could be completed. That is the way of accomplishing fair, just, and equitable taxation, not having one man say, "It shall be done". Who at the state level really understands the problems at the county level? It is one thing to be concerned about the rights of the individuals, but we should also be concerned about the rights of the various counties. I don't know how many of you know how your home is assessed. In assessing a home in town, the State Board of Equalization currently requires the assessed value to be 40 percent of the market value. By statute, 30 percent of the assessed value equals the taxable value. Simply multiply the mill levy times the taxable value and arrive at the amount of taxes to be paid. It has been asked why the State Board of Equalization is not requiring all counties to assess at market value, as required by statute. I asked the State Board of Equalization to prepare, to the best of their ability, a report similar to the property tax shift report presented by the Board to the Revenue and Finance Committee. I asked them to determine what percentage of market value the current assessed value is and to these apply some hard tax figures on what the present taxes are and what they would be if we were to suddenly assess all property at its full cash value. In preparing this report, they multiplied the present taxable value by 200 mills and determined that there would be 193 million dollars plus in taxes. To raise the same 193 million dollars plus, this 200 mills could be lowered to 61.7 mills, if you assessed all at market value. But what happens? Property tax on agricultural land statewide would suddenly jump from 21 million to 56 million. And if you'll look at that—this particular sheet, you will see it on there. Net proceeds of mines would drop from 15 million to 4 million. There would be very little change in city and town lots statewide. It would decrease from 56 million to 54 million, but public utilities would suddenly drop from 30 million to 18 million. Look who really benefits when you assess at 100 percent of market value, as this committee is recommending. Is that what you want? Our present statutes requires property to be assessed at market value. To remove Section 15 from our Constitution—says "fair, just and equitable"—means that we are being forced to assess property at market value. Is this fair, just and equitable as required by the Constitution? Or are we going to have the State of Montana own all the land in the state because no one can afford to pay taxes on it? To really know exactly what is going to happen, it would be necessary that you compute these figures on an individual school district basis. I had the State Board of Equalization check on what would happen in some of our counties. Using the same items, agricultural land went from $656,000 in taxes to $1,989,000 in Yellowstone County. Public utilities decreased from 2,800,000 in taxes to 2,100,000. Solvent credits, held primarily by banks in Yellowstone County, decreased from 3½ million to 1.7 million dollars in taxes. Look at this. City and town lots and improvements, now paying 10 million, would increase to nearly 12 million dollars. Is this any way to bring in new industry? I have figures on some other counties. In Fallon County, the taxes on agricultural land will go up four times, from 200,000 to 900,000; farm improvements from 97,000 to 233,000; livestock from 180,000 to 289,000; city and town lots from 220,000 to 330,000; net proceeds of mines will drop from 1,989,000 down to 950,000; public utilities from 450,000 down to 432,000. In Garfield County, agricultural land will go up from 406,000 to $788,000 public utilities will go down from 94,000 to 34,000. Is it wrong because the Boards of County Commissioners and the State Board of Equalization used an income approach? And let me point out, those are the two key words in this whole thing. If I had to do this in 10 words or less, I would merely say, "You can't do it all by actual value; you have to consider the income approach." These are important words. In valuing agricultural lands, rather than valuing the lands based upon what somebody is willing to pay for the land even though he is not concerned about producing a crop on this land, our statutes require that agricultural land be classified according to use and graded according to productivity capacity. This indicates to me that the income from these lands was to be considered in assessing them as our Constitution requires, "fair, just and equitable". Sales prices does not always produce equality in all types of property. Very little land is sold in the State of Montana as an agricultural unit. Many sales are small acreage purchased to add to existing agriculture units. Many sales are speculative or tax writeoffs. I am not aware of any state constitution that requires that all property be assessed at market value; but if we want the State of Montana to own all the land in the state, do as this committee wants and assess all property, including lands, at market value. To use other than cost or sales price to determine market value of property where such property is not being sold every day is not new to all of the members of this committee. As recent as 1967, a member of this committee represented owners of several separate commercial buildings in their appeals before the State Board of Equalization in granting relief to the taxpayers, stated as follows: "The capitalization of net income from probable future rent approach to value indicates a fair market value", et cetera. Railroads and public utilities are therefore not the only properties that you must look at to income. Commercial properties fall in this category. It is also fair, just and equitable to look to the earning ability of the land when assessing it, if the land is to be used for agriculture purposes. I quote from page 9 of the report of the Special Committee on Classification and Appraisals to the House of Representatives of the 38th Legislative Assembly, dated February 5th, 1963, and I quote: "The committee questioned whether market value alone is a satisfactory measure of value for all types of property, because some properties are not bought and sold in the market and because, as to some properties, the market values are artificially inflated." As to the case with farm and ranch land, it is therefore considered desirable to use the term "true value" instead of "full cash value", which connotes market value, and to authorize the State Board of Equalization to consider other criteria and factors, such as productivity, rental value, capitalization of earnings, original cost, reproduction costs, depreciation, value of stocks and debts, inflation in deflated items, as well as sale or market price. In the valuation of properties of various kinds, it is also certainly necessary to authorize a State Board of Equalization to consult with and instruct county officials in the use of such criteria and factors in the assessment of property. As stated before, what has the county boards or the state boards done that is so bad? Have any of you bothered to check to see what they have been doing before you ask to have them abolished? I checked, and here are some more things you can think about. In 1954, a 3-year sales ratio study was conducted. In 1956, biannual report, page 12, showed that the average assessed value of all property assessed at the county level was approximately 30 percent of market value. This triggered the start of our reclassification and reappraisal program by our 1957 Legislative Assembly. Public utilities and railroads were being assessed at a far higher percentage of market value. In 1959, the State Board of Equalization attempted to equalize all county assessment and state assessment at 40 percent. To do this, it was necessary to increase counties to 40 percent and to decrease the state-assessed property to 40 percent. Because the counties were not able to increase their local assessments rapidly enough, the State Board had to slow down the reduction made to public utilities because of the severe upset to county valuations. Today, public utilities are still assessed at higher than 40 percent and local property is still assessed less than 40 percent. But the gap has been narrowed. Efffectively July 1st, 1957, it became necessary to reclassify all of our lands in the entire state. This program was accomplished in about five years' time. And since that time, most of our counties have upgraded their land classification program, with some of our counties completely rechecking all of the land classes to take into account the increase in production. In the past 10 years, the average value per acre of nonirrigated land has been increased over 50 percent; grazing land increased over 18 percent; wild hayland increased over 56 percent. All agricultural lands combined have increased over 23 percent, due to the efforts of the State and County Boards of Equalization in carrying out the reclassification program. It was necessary that all buildings and city and town lots be appraised in a uniform method. This program took better than six years and a great deal of money to get completed. Actually, there were two counties that just completed this program and put it on their books two years ago. A lack of financing on both the state and county levels has prevented the completion of these programs and the updating of them as required by law. Presently, most of our counties are on a 5-year program of reappraising all of their properties, trying to put 20 percent on the books each year. What else is the State Board doing? I have found that they have a total of seven appraisers working on the property tax field program. They requested, for three sessions in a row, a real estate transfer tax so that they could determine whether or not the property is properly assessed. Because the Legislature has refused to enact this program, the Board of Equalization has had to conduct its own sales ratio program and currently has completed three-fourths of the county. They have been spot-checking the appraisal records in the county to be certain that properties are assessed equitable within and between counties.

CHAIRMAN GRAYBILL: Let's keep the talk down. If you want to talk, you'll have to leave the chamber. Go ahead, Mr. Eskildsen.

DELEGATE ESKILDSEN: I realize this isn't very interesting, but I can assure you one thing: that of all the things we've done up to this point, this is the part where you get down to the nitty-gritty as who's going to pay and how much. The difference between this assembly here and all Legislative Assemblies is that we don't have to worry about who's going to pay; all we have to do is write it up. In the Legislature, their first question is, how much is it going to cost and who's going to pay for it? And this is what I'm talking about here. I'm talking about the tax program of the State of Montana. And, like I say, it isn't very interesting. Taxes aren't very interesting to talk about, but I'll assure you they're important. And the people that's going to pay them, they're the ones—when you go back home and they look at this whole Constitution, they're going to say, "Well, if I vote for this, how much will this cost me?" And we better have some answers for them. Not only for the boards and bureaus we included in this on a constitutional basis that we're going to have to have money appropriated for by the next Legislative Session, but also who—what's going to happen to our whole tax program and to the State Board of Equalization. It also shows whether the counties are found in the appraisal manual submitted by the state. The same kind of manuals are used nationally. This isn't just one that the state picked out. It's a standard manual that they use, but it fits Montana's condition. Of the seven appraisers, one man works almost entirely with land classification. One is a forester, recently hired to gather data and update formulas to be—use in arriving at proper values for timberland. One senior appraiser instructs county and staff appraisers in assessing more complex properties, revising cost schedules, depreciation schedules, et cetera. Four other well-trained appraisers are involved in appraising improvements for counties, instruction, and assessing county people in revising cost tables and gathering sales ratio data. The State Board of Equalization assessed property that amounts to about 25 percent of the entire tax—state taxable valuations. In 1907—1970, there were 65 public utilities assessments made, plus all of the net proceeds of mine assessments. This brings to me another subject. A member of your committee has questioned why the State Board of Equalization has reduced utility and railroad assessments. I told you one reason why. That should be exactly what this committee is asking for. You will—you want all properties assessed at market value. I have already stated that public utilities are assessed at a higher percentage of value, and they were assessed at a higher percentage of value in 1954. That could be the reason the railroads and public utilities assessments should go down, but here's another reason why railroad assessments are going down. I found Milwaukee Railroad in 1968 had a profit of seven and one-quarter million dollars. In 1969, a million dollars' loss; another eight million dollars lost in 1970; and they were headed for another loss in 1971. This makes a difference in the assessed value. A company that is losing this kind of money cannot be worth as much as it used to be when it was making a profit. This kind of property isn't sold every day, and you have to consider its income as well as its cost. And the stocks and the bonds of the company determine what the property is worth. If the companies aren't making any money, down goes the market value of their stocks, as well as their ability to pay property taxes. I found that in a study conducted by the State of Wyoming, dated January 8, 1969, that the State of Montana was doing—wasn't doing too bad a job in assessing railroads. The Union Pacific Railroad had an average value of $871 million by the 13 states that are involved in this railroad. Montana valued them at $909 million; Oregon at 89 million—$889 million; California at $900 million. These two states, Oregon and California, have the largest appraisal staffs of any of the Western States. All 13 of the states valued the entire Union Pacific Railroad Company about the same as Montana did. I also have another comparison of 14 states that assessed the Burlington-Northern Railroad system last year. In 1971, average assessed value was 96 percent of the previous year's assessed value—96.9. In other words, the average of these states believed that the Burlington-Northern Railroad should be decreased 3.1 percent from the previous year. Montana assessed the Burlington-Northern at 97.4 percent, or a 2.6 percent decrease from the previous year. This proved to me that the Montana State Board of Equalization is not the only state that finds that railroad assessments should decline, even though Montana has not reduced them as much as the average of the other states. Our railroads, nationwide, have been losing propositions in their passenger service, and that is why the federal government has created Amtracks to help offset these losses. The State Board of Equalization, in determining the value and also the final figures of how much taxes should be paid by the railroads, use the annual report submitted by these companies and an annual report submitted by [to] the Interstate Commerce Commission by these companies. By the way, I have checked and—the two figures and find them to be one and the same. These books are audited, and this is what I say: no auditor is going to purge himself falsifying the figures of any company. Figures shown on these reports are used by the companies in filing their federal returns. Look at the same—look at some of the other properties assessed by the State Board of Equalization. The power and gas companies have increased from 135½ million to 183 million between 1960 and 1970. The telephone companies have more than doubled from 35 million to almost 75 million; pipeline companies from 19 million to 38 million. Even though the railroads' values have decreased, the total utilities and railroads assessed by the State Board of Equalization have increased from 386 million to 461 million. So all properties assessed by the State Board of Equalization have not decreased as has been stated. I submit that some of the growing companies should have had an increase in value and that they were increased by the State Board of Equalization. I think our County Boards of Equalization and our State Board of Equalization are doing a good job. And a very difficult job in trying to equalize these properties. If you want a good job of equalization, you should first find out what the program is and what properties it is necessary to decrease and what properties it is necessary to increase, before we try to abolish dedicated people who are only trying to do their job. I wonder if any member of this assembly realizes the amount of money being spent by the Property Tax Department of the State Board of Equalization in trying to do this work that some people seem to be so dissatisified with. During the first seven months of this fiscal year, the Property Tax Department spent $85,000. This amount is an average of $12,190 per month. Divided equally between 56 counties, the total expenditure of this department amounts to $217. We're talking about some new boards and some new people; who's going to pay the bill? I mean—what are we going to get for $217 in each county? This new division couldn't even hire a clerk per month, per county for this amount. Even if we include a board member's salary, the total amount spent by property tax per county would amount to $240 a month. That's all we're spending on this whole tax program in the State of Montana. In my way of thinking, this department has done a tremendous job on very limited amount of money. If you really want a good job done in equalizing taxes, see to it that our present system is properly financed so that they can do the job; don't take the rights away from our people by establishing a system that nobody knows what it will cost to run and nobody knows where the money will come from to run it, except out of the people's pocket. That will have to last another—right. Now, this—I'm sorry that it took so long. It was rather boring, I know, to people who aren't interested too much in taxes; but I'll tell you, this is the most important section that you've had before you right up till now. I sure hope you give it some consideration. Thank you.

CHAIRMAN GRAYBILL: Is there other discussion?

Mr. McDonough.

DELEGATE McDONOUGH: Mr. President. It's somewhat difficult to answer the presentation in favor of this amendment, but I rise to oppose this amendment and to bring back some clear facts as to what the majority proposal actually proposes to do. It doesn't propose to raise anybody's taxes. It doesn't change the ratios as to how taxes to be arrived at—I mean, how property—the valuation of property is to be arrived at. It does, however, change the method of appraising and equalizing taxes in the State of Montana. And there's nothing in the proposal that says that the state cannot designate the County Assessor as their agent as—at the local level. There's nothing in the proposal that says the state cannot designate the Board of County Commissioners to assist at the local level. All it does is give the ultimate authority to appraise and equalize taxes in the state. Present Sections 15 and 16 of the Constitution gives the powers to the Board of County Commissioners and the State Board of Equalization, and the State Board of Equalization has only supervisory powers. And that's been the big hangup. The State Board was given these powers in 1921, and that's over 50 years ago. Reclassification come into effect 14 or 15 years ago, and there still is not equalization between counties. That is all we want to do by this section—is to give the Legislature the power to equalize the property tax in Montana. Now, there's no limitation on the Legislature relative to income tax; there's no limitation on the Legislature relative to excise taxes. They can do what they want, and that's what we want to do by the—removing these restrictions on the valuation of the property tax. Now, I won't go into the deficiencies in the present program. And the State Board has done, in a lot of cases, a very good job. But under the present thing, by incorporating them in the Constitution, in the wording of Sections 15 and 16, they can only go so far. There is farmland—and we talk about equalization—there's farmland from two counties, and they can be right across the fence, and one section of farmland is appraised at $10 an acre and right across the fence it's appraised at $8 an acre or $6 an acre. Now, that has to be equalized. And why we talk about Serrano versus Priest so much? Is it—there is now $90 million raised by property taxes to support education. And if Serrano versus Priest is put into effect, the Legislature, in order to replace that 90 million—and if they wanted to replace that 90 million by property taxes, would actually have to levy approximately 100 mills statewide on property. And if the property isn't equalized, those counties which have purposely kept their assessments down would receive a tremendous advantage from those counties who have fairly equalized their property between the individual taxpayers and between the other counties, as promulgated by the State Board. But under the present system, the only way the State Board can make them equalize—the State Board cannot go down and tell them what their valuations will be on a fair valued basis; the State Board has to bring them to court, have the hearings, bring them to court. And it'll take another 10 or 15 years to equalize property in the State of Montana, if it's done at all. And that's why we're here. We're allowing the Legislature to be able to make a statewide valuation of property. They're the ones, as Mr. Eskildsen says, they're the ones that have to pay the bill. They are the ones that have to levy the taxes. Therefore, they're the ones that have that responsibility, and they should also have the responsibility of setting this thing up so it will work. And they don't have that responsibility or authority at this time. And all we're doing is allowing them to do it. If they feel that the State Board is doing a good job, they can retain them; if they don't, they can replace them with something else. The State Board now, because they're a constitutional board and because it says they'll value property fairly, justly and equitably and because that is in the Constitution, giving their powers, they say their interpretation of those three words are higher than what the Legislature says we—they shall do. When they can say that and they're appointed by the Governor on those terms that they are, there's no way you can change it. You can elect the Supreme Court and throw them out if they make bad decisions is what is meant by fair, just and equitable. But you can't change the State Board except through the Governor on a staggered term of once every six years. What it does to the present Constitution is take away from the people the right to control the valuation of property. And that's what we're removing. We are not changing a thing. We're not changing one dollar of valuation. But we're removing that independent board from without the Constitution and allow the property to be taxed much more equitably than it is right now.

CHAIRMAN GRAYBILL: Mr. Berthelson.

DELEGATE BERTHELSON: Mr. Chairman—Would someone tell me if I'm on?

CHAIRMAN GRAYBILL: You're on.

DELEGATE BERTHELSON: Thank you. Mr. Chairman, fellow delegates. I rise to oppose this amendment. I'm sure I don't need to remind the delegates to this Convention that I am a man of few words. Now, I respect Mr. Eskildsen as a member of this delegation, and after his long dissertation, I am sure that each of you are thoroughly confused. Now, our committee heard literally reams of this type of testimony. I would ask each of you, now, to take your Report Number 7, on page 18, and read with me lines 4, 5 and 6 from the committee's comments and rationale—quote: The Committee heard reams of testimony concerning the inadequate job of assessment and tax equalization in the state—end of quote. I should like to refer this committee to the Montana Legislative Council *Property Taxation and the Montana Property Classification Law* of December of 1964. The report is Number 16. And I should like to quote from this report. I am not going to take time to read to you the list of members that served on that Montana Legislative Council. I'm going to hold the book up and refer you to page 10, and I'm going to quote from the heavy black type in this legislative report. And knowing that I might be challenged if I read only part of this quotation, the summary that came from this Montana Legislative Council report, I am going to read it all. The first few sentences are probably not relevant to what I want to emphasize. Quote: "As a matter of fact, our investigations show that land is assessed at about 30 percent of its full value; cattle at approximately 45 percent; sheep, 40 percent; horses and mules, 52 percent; hogs, 18 percent; bank stock, 65 percent; and other forms of property at varying percentages. In the face of the positive statutory enactment requiring assessment at full value and in the face of instruction from the Attorney General that the assessment must be made in that manner": now this is what I want emphasize that came out of this report, and I'm going to supply the emphasis—"the assessors meet every year, resolve themselves into a sort of legislative assembly, and proceed to fix the values at which different species of property shall be assessed—period. We shall later go more fully into the subject of classification of property, which we believe is authorized by the Constitution. We simply desire, at this point, to call attention to the fact that we have a sort of classification of property in Montana, regulated not by the Legislative Assembly but by the assessors and the State and County Boards of Equalization. We believe a classification should be made by the Legislature, and transmit herewith a bill for that purpose. It is generally conceded in this state that the present system of taxation is a failure and results in unjust discrimination and is utterly inadequate"—end of quote. Ladies and gentlemen and fellow delegates, let's vote with the committee on this problem.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Mr. Chairman. I rise in opposition to Mr. Eskildsen's proposal and in support of the majority proposal. I served on the Revenue and Finance Committee and added, probably, more the exuberance of youth, as our Chairman said, than the expertise of my fellow colleagues. But I was impressed with certain facts and testimony before the committee. One is that we have a deplorable system of equalization and assessment in Montana. Of the reams of testimony which we heard concerning the equality of taxation among and between the counties, I can recall but one witness who testified that we had a fair and equal system between the counties. We were compelled to listen very strongly to the mandate of Serrano versus Priest. As you all know, Serrano versus Priest declared the present system of school financing in California to be unconstitutional. California's present system of school financing is based very similarly—on a system similar to ours. We were also aware—four other—and there are probably more now—cases throughout the states determining school financing at the local level to be unconstitutional. One of these cases was ruled on by a federal panel of three judges in Texas. These cases are all on their way to the U.S. Supreme Court, and I am certain and all the members of the committee are certain and all the witnesses who testified at our committee are certain that the U.S. Supreme Court is going to rule definitively that the present system of school financing is unconstitutional. What we have, as we all know, is a system whereby counties who are blessed with perhaps a net proceeds tax from the oil or copper industry have the opportunity to lower their valuation and their mill—lower their valuation, bring their mill levy up to par, and then when they don't have enough revenue, drain the general fund. This is a burden on all of us. What our committee proposes is a system of financing whereby we all pay the same mill levy. The state, through our system, will do the assessment and appraisement. We also heard testimony of the inadequacies of the State Board of Equalization. I would dare to say that the witnesses were almost unanimous in declaring that the State Board of Equalization had created a rather shabby system of appraisement and equalization. We heard testimony concerning the local assessors. Local assessment, perhaps, is the greatest evil we have in our system. It's closest to the people, and consequently the local assessors have exerted on them great pressures for favoritism and things of this nature. This is something we must eliminate are—we're to have a fair and equal tax system. But as I mentioned before, the compelling case of Serrano versus Priest perhaps loomed heaviest on us when we were making our decision to open the doors for a system of state financing. I think this is something we cannot ignore, because it's coming. I think the committee realized it was coming, and the committee left the door open. For this reason, I urge the adoption of the majority report. I would like to point out one other problem—a problem I see in Mr. Eskildsen's amendment to our proposal. Mr. Eskildsen provides, and I am quoting, "The State Board of Equalization shall annually assess the property of all railroads, telegraphs, telephones, electric power and transmission lines, and all similar property constituting a single and continuous property operated in one—more than one county in the state, and the same shall be apportioned to the counties, cities, towns and school districts in which such property is located." This is the way it is presently, and this has to be changed again if we are to fund our schools in a manner which will be mandated by the U.S. Supreme Court in conformance with what Serrano versus Priest stands for. Thank you very much, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Artz.

DELEGATE ARTZ: Mr. Chairman. One thing that's been bothering me—I'm on the Revenue and Finance Committee. The other morning—yesterday morning on the ham radio net, this committee was being chewed out royally that we were providing that all property was to be taxed at fair market value. Delegate Eskildsen has also indicated that. I got a telegram, just now, from Great Falls, Belt, and Stockett saying the same thing. Now, I want to get it in the record, loud and clear, that I am a strong advocate of taxing on productive value rather than fair market value. I have been assured by all the members of the committee that Section 3 does not make it mandatory that property be taxed at market value. The wording—it says, "is equalized". Mr. Eskildsen's amendment says "equalized" also. Therefore, I oppose the amendment. Thank you.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, fellow delegates. I, too, am a member of the Tax and Revenue Committee. I do not pose as a tax expert. I do rise in opposition to Mr. Eskildsen's proposal. What it will actually do is lock into the Constitution what we've had. It won't change it. I'm sure you're all aware—I know you're all aware—that the power to tax is an inherent power and it's inherent to the Legislature. I think it is fundamental that the Legislature must be able to devise and control and equalize and appraise the property in the State of Montana for the benefit of all Montanans. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. Chairman. This looks like a parade of the members of the Finance and Revenue Committee. We've spent a good deal of time talking with Joe, and I feel a little bit guilty that he's being outnumbered at the front here, but I think he's pretty well able to take care of himself. I'd like to say a word about this committee. We're really pretty proud of the product that has come out of this committee. If you will look at the vote on this section in the back of our booklet, it was unanimous from the entire committee that this wording be used. There was no disagreement at all as to our vote. Now, our first conversations in our committee were not directed necessarily to taxes, not necessary to revenues; it was sort of a bull session of where we—what contribution we could make to this Convention and to the people of Montana that would have a beneficial effect on the citizens who are going to live in our state in the years ahead. And throughout our deliberations, I think this thought was incumbent on us—that we were trying to look ahead at the problems of Montana of the future. And we were all in agreement that we want to make Montana a place that our children want to live and are able to live. Much of the testimony we had was directed at the nonequalization or inequality of the taxing system that we have here today. Now, you've heard from Mr. Eskildsen, and I'm sure that you recognize that many of the—of his thoughts probably reflect the thinking of some of the boards—of some of the people who are involved in the structure here now. And in no way did we want to be critical of these people. We think they're good public servants; we think they're doing a good—we—they're working hard; they're striving to accomplish what they think is, undoubtedly, in the best interests of the people of the State of Montana. But the facts of the matter are these: from the testimony we received, we do not have true equality of taxation in the state right now. Now, what effect will true equality have—of taxation? And true equality may be defined, perhaps, as: "When the other fellow pays the taxes and I don't pay any, we have true equality." This may be some of the thinking behind the statement that you heard today. But our group feels that if Montana is to go ahead, we are going to have to have equalization in the eyes of those who would like to either stay in Montana and invest money or those who would like to come to Montana and invest money, creating more jobs for our young people. It takes about a $20,000 investment to furnish a job for someone. Well, it—in the State of Montana, we've got an awful lot of nice people and we've got an awful lot of nice country. And we've got room for more of our young people to stay here if we're able to create employment opportunities for these young people. And it is in this direction that our board was pointed. Now, our feeling—we have—we express a confidence in the Legislature to make the determinations of how the people of the future are going to be taxed. In my mind, the Legislature acts somewhat as a Board of Directors in a corporation. And for a corporation to say, "We are going to appoint a Board of Directors and charge them with certain responsibilities that are going to be the same responsibilities 50 or 100 or 200 years from now," just doesn't look like it's reasonable. The Legislature is responsive to the people. The Legislature is the people. As times change, as attitudes change, as our economy changes, the Legislature can respond to these changes. And if we lock in wording into the Constitution, it may make it very difficult for our state, which we all are so much in love with, to grow and develop like we hope that it will be able in the future years. Now, the committee is not recommending that we fire anybody. We're not talking about any job losses, and we're not talking about people really losing their responsibility. What we're doing is, we're taking them out of the Constitution and putting it in the hands of the Legislature. And as Mr. McDonough explained—I think quite clearly, but I would like to reemphasize—it's very, very likely that the Legislature will use much the same structure that we have now. The Tax Assessors may have much the same responsibility in the future. The Assessors, as you all know, are the guys that count the cows. They're the ones that look at the land, determine what the value is. The appraising of the property is the area that there is some question. An Assessor finds it, locates it, but he may look at the appraisal process a little differently than someone else. And our feeling was—and it was, again, derived from the testimony we heard—was that the appraising of Montana property should be equalized, because an acre of land that produces so much—and, again, we are not arguing about the method of taxation, because that, again, is already in the hands of the Legislature; it's statutory—the classification of properties is statutory. The things you heard this morning of farmlands which now pay 21 million, may pay 56 million, this is away from our intent. It—the Legislature, at the present time, are the people who determine the classification of these properties. But what—our feeling was that if we can arrive at a fair, equitable appraisal system for the State of Montana, the people of Montana are going to benefit, because we are going to have an open and a growing economy and environment. Now, I'd like to quote, this morning—I'm not a great reader of the *Missoulian* and I'm not really a great green-button-puncher, as most of you know—but there's kind of an interesting editorial this morning that may bear reading at this time. About—toward the end, it says: "Today the Convention"—referring to our Convention—"is scheduled to take up the Revenue and Finance Committee proposal. It is a fine document containing both progressive ideas and essential compromises. Yet, it is a good bet that the Convention will surrender to the highway lobby on the highway trust fund issue, which has

[was] already compromised in the committee proposal. It might knock out the Tax Appeal Board, set up separate tax appeals for the state agencies, which set revenue policies and procedures. It might reinstitute some of the archaic and limiting revenue provisions of the old Constitution, which the committee proposes to be deleted." I ask you, as delegates, to think not of your friends who are now serving in positions here in the Capitol and think in terms of what is in the best interest of your children and the generation to come. If we are influenced by the status quo and are locked into the procedures of committee and taxation principles that we have today, we may really be limiting the growth of our great state in the years to come. I submit and I implore this delegation to support the committee report. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: The question is on Mr. Eskildsen's amendment. Is there further discussion?

Mr. Driscoll.

DELEGATE DRISCOLL: Mr. Chairman.

CHAIRMAN GRAYBILL: You're on, Mr. Driscoll.

DELEGATE DRISCOLL: Mr. Chairman. I rise in opposition to Mr. Eskildsen's amendment. The reason why I rise has already been stated, but I wish to emphasize, for the Convention, the unanimity of the committee on this proposal. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Anderson.

DELEGATE JOHN ANDERSON: Mr. President, members of the assembly, I rise in support of Mr. Eskildsen's amendment. I think all of us are aware that Montana is among the highest property taxes in the nation. I think it is one that is of great concern. I know I have had several calls in regard to this very matter. I have received a telegram here, just now, from the Board of County Commissioners of Beaverhead County. I would like to read it to you: "We, as the Board of County Commissioners of Beaverhead County, would like to support you in your efforts to retain Section 15, Article XII of the new Constitution. Also, reinstate Section 5, 6 of Article XIII—" (balance of telegram text completely indiscernible) I—One of the things that concerns me most about this and, I think, is one that we should consider very seriously. And I think that we should have something in our Constitution to—that we have some Board of Equalization, especially within our counties. I think all of us can recognize that property taxes was mainly thought of to take as a source of revenue for local finances, such as county and municipal uses and our local schools. And—but we know that we also pay property taxes for state purposes, and I think perhaps rightly so, up to a point. But I think it's just as basic today as it has ever been that we should consider private property taxes mostly for local revenue to support our local government. So I especially think that we should have something in the Constitution that will assure us that we have some sort of a board locally to look after our tax equalization. I thank you.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Mr. President, fellow delegates. As Chairman of the Education Committee, I would be remiss if I didn't, at this time, stand up and make some comments. The Education Committee studied this quite thoroughly. We feel—I'm sure I speak for the committee when I say this—we feel that we have to be flexible for the future. My good friend, Joe Eskildsen, I'm sorry, does not represent that view in my view. A report that was made—the Superintendent of Public Instruction—Mike Billings has spent about a year developing a report—I don't know if you've seen it, but I'm sure you've read about it in the paper—which definitely shows there are marked inequities throughout this state within the—between the different school districts. Part of this is due to the varied assessment values that have been established. And I will say this on this floor without any doubt, that if someone was to bring a Serrano-type case to the Supreme Court of Montana, he would win that case. The proof is there. The majority report, in my view, looks to the future. It is flexible enough to take care of all possibilities. Therefore, I support the majority review—report, and I'm against the—Mr. Eskildsen's amendment.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman. I come from District 6. I have five complete counties in District 6. I have letters here from every one of those Board of Commissioners and Assessors, supporting Joe Eskildsen's minority report here. I have telegrams all over my desk; it's full of them. I have one here with 13 names on it from people in eastern Montana. I can foresee that if this would take place, that farmland is put on a market value as it's inflated today, the day could come, if we went through another drouth period, when each one of these counties are going to have to own every bit of this farmland, because they certainly could not pay taxes on the basis of an inflated market value. It must be on a production sliding scale of some kind. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Speer.

DELEGATE SPEER: I want to speak in support of the minority Section 3 stating the need for state centralization of the assessment function. There have been ample studies in Montana and by the federal government to prove that our present system results in inequity. We've already heard of the one study of the Legislative Council. There was one in 1960, which pointed out the same inequity. We had the reclassification and reappraisal program in 1957, which was supposed to remedy these conditions. But not only did a Senate—or House Committee of the Montana Legislature say that this had accomplished nothing—there was the—still the same underassessment and inequity in assessment in Montana; and this was also verified by studies of the federal Bureau of the Census. We have had three reports of the Bureau of Census on government which say that in Montana, there is a greater inequity in the assessment between counties than in all but two of the states in the United States. The only two that have greater inequities between counties in the United States are New Hampshire and Texas. That was said in the 1967 *Census of Governments*. The only way to correct this inequity of assessments between counties is through state centralization of assessment, and that is the reason that I support it. There have been two Commissioners of the State Board of Equalization who have said that this board should be removed from the state Constitution. I won't go into the results of the inequities. They've already been pointed out, I think, in the case of the school distribution. Counties can underassess in order to get more of the school foundation program; they can overassess in order to increase salaries of local officials. And there are other evils that result from this inequity and leaving the assessment in the local area.

CHAIRMAN GRAYBILL: Mr. Lorello.

DELEGATE LORELLO: Mr. Chairman. I'd like to ask a question, maybe, of Mr. McDonough, please.

CHAIRMAN GRAYBILL: Mr. McDonough, will you yield?

DELEGATE McDONOUGH: Yes, Mr. President.

DELEGATE LORELLO: I'm Lorello, Swede. I was with you last night—you remember? (Laughter) Mr. McDonough, I'm concerned about this market value—productive value. I think I understand what they mean. Let's get to the word "equalize". And let's suppose that today we build a home in Billings costing $25,000. Let's then build another home in Philipsburg, Montana, and it too will cost $25,000. Now then, would you tell me what the taxes would be on these two homes? Just what would they be at the end of the year? How would you equalize these things, between the two cities?

DELEGATE McDONOUGH: Well, that's a point. What we do by this proposal, we don't tell anybody how they're going to equalize these two taxes between these two counties; we leave that to the Legislature. And one thing I'd like to make clear on that here—that we don't say anything has to be equalized in any one manner. We leave that to the Legislature and the body that they set up, whatever it may be. We don't say that land has to be taxed on market value. And incidentally, houses are—residential houses are in Montana. We don't say that other land can't be taxed on productive value. And there's nothing in the present law that says that you can't tax land on productive value. And there's nothing in what we're proposing that you can't tax it on productive value. This thing about changing—how do you arrive at valuation, we're leaving that wide open, because how to arrive at valuation of any piece of property is very complex. And market value is just one of the things you take in consideration. Now, on the difference between the houses. Presently now, houses are started off with—that class of property does start off with market value. And if the house is only worth—you build a house in Philipsburg and if there's not too much market for a house and you pay $25,000 for it, it might only be worth 20. And if the Legislature says that houses will be on market value, then that house will be 20 in Philipsburg and 25 in Billings, and they'll apply the local mill levy to it. But I don't know what the Legislature is going to do. They might actually go to a rental value instead of a market value as to figure out the cost of houses. And they should be allowed that flexibility to do that. Does that answer your question, Mr. Lorello?

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman. I think maybe first I should state my bias in this as a former lobbyist from the League of Women Voters. Our very oldest support position in Montana politics was one supporting a more equitable administration of the property tax. It was also always a very frustrating position, because there was very little we could do about it. We did work with the Board of Equalization, and I don't want to cast any aspersions on them. I think that they were really trying to do the job, but they were also aware that they weren't really able to equalize taxation in Montana. We have talked about the importance of equalizing taxation in the event that we get into statewide support of schools. But I believe, also, that nonuniformity of assessment is a violation of the equal protection clause of the United States Constitution; which means, whether we're dealing with schools or anything else, we are really—by maintaining a system that is not equal, we are violating the U.S. Constitution. And I think that eventually we're going to run into trouble with it. In our work with the League, we've also gone into the problems on the county level. I just saw one of our old friends walk into the balcony up here and recall his telling stories when he was a foxy old County Commissioner. We get the idea of reassessment, and I would guess that he wasn't the only County Commissioner who saw to it that their assessment rates were cut something like 35 percent before the Assessors came through. They came through and looked at the books and said, "Well, these are just a little low", and they raised them something like between 18 and 20 percent. In a sense, that's his duty, serving the people in his county. But assessment, if it's going to be looked at as a statewide function, can't really function well with people trying to gain advantage for people—their own people at the local level. And I think that that's the system that we're up against. I was delighted when I saw most of this committee's report. I can't say I'm happy with the entire thing, but I think, for the most part, they've done a splendid job. And I think that they've left the flexibility that we're going to require to meet our needs in Montana. Thank you.

CHAIRMAN GRAYBILL: Mr. Conover.

DELEGATE CONOVER: I am real concerned. Mr. Chairman, I would like to ask my real good friend, Mr. Drum, if he'll yield to a question.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: I certainly will, Mr. Conover.

DELEGATE CONOVER: Dave, in all your deliberations on this, as you know—in my—way I stand, I have land in three counties—and I am disturbed about this. I know it's not equal. I'll have to agree with you. But is there any way that you can prove to me that we will have a County Board of Appeal or Appraisal Board within our counties, that this will not be taken away from us? I can maybe see it go with you, but if we lose this, then I am real afraid.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. Chairman, do you want a speech or an answer?

DELEGATE CONOVER: I want an answer.

DELEGATE DRUM: I, too, have land in three or four counties, Max—and this—the answer I would give is this—that if we have true equalization, it could mean more taxes for some people but it could mean less taxes for others. And if you base the approach on equality, fair treatment for all is something that—it's pretty—really hard to argue, Max. If you are being taxed in one method in one county—and maybe your taxes are a little different in another county, which is true in many cases. Many ranches in this country have—there's a difference in the value of land that lay on one—or the method of appraising land on one side of the county line and on the other. But the thing I ask you to do is to recognize that, in the best interest of the state and those that are living in the State of Montana, isn't it more logical that we should try to receive fair treatment for all, rather than for you in one county or another county? That is the thing I embrace, and I ask you, and all those in agriculture, to—not to say our taxes are going to go up tomorrow but that true equality of taxation is going to be of real benefit to the State of Montana.

DELEGATE CONOVER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Conover.

DELEGATE CONOVER: Will Mr. Drum yield to another question?

CHAIRMAN GRAYBILL: Mr. Drum, would you yield again?

DELEGATE DRUM: Yes, Mr. Chairman.

DELEGATE CONOVER: Can you guarantee me that if this—if the majority proposal goes through, can you guarantee me that we will not be taxed on our private land on the valuation, but on the production of it?

DELEGATE DRUM: Well, first—Mr. Chairman. First I would like to say that I learned a long time ago not to guarantee anything—not to guarantee that it's going to get dark tonight, not to guarantee that tomorrow is coming, not to guarantee that the sun is going to come up tomorrow. But I would say if true equality is given to you, that you may go down as well as go up, Max. I don't know what the judgment play is, but I think that once you have true equality, that you certainly don't have anything to complain about. How can I? Mr. Chairman, did I answer his question? No?

CHAIRMAN GRAYBILL: Well, he'll tell you.

DELEGATE CONOVER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Conover.

DELEGATE CONOVER: I have one way to go, I think. If it happens that we are taxed on our taxable valuation, I only have one choice. I think I'll sell my ranch to Mr. Leo Graybill or else go home and shoot myself or hang myself. I'll take one or the other.

CHAIRMAN GRAYBILL: Well, I can tell you which of those is best, Max. (Laughter)
George Rollins.

DELEGATE ROLLINS: Unlike my colleagues from District 8, I don't own land in three counties. I own, in company with the bank, a little bit of land in one part of a city. But I am concerned that wherever my land is or wherever anyone else's land is, that they all be assessed equitably. I want to bear my fair share of the taxes; I want others to bear their fair share of the taxes. I also want to say, Mr. Chairman, that I have tried to support majority reports generally in these discussions. I wish to support the majority in this. I know that these people have worked hard. Now, Mr. Drum and Mr. Driscoll, between the two of them, don't know the difference between an old Irish philosopher and a noted English poet. But I do think that, between the two of them, they have made a thorough, sincere study of taxation problems. Mr. Chairman, I oppose Mr. Eskildsen's amendment and stand in support of the majority.

CHAIRMAN GRAYBILL: Mr. Delaney.

DELEGATE DELANEY: Will Mr. Drum yield to a question?

CHAIRMAN GRAYBILL: Mr. Drum, will you yield?

DELEGATE DRUM: Yes, Mr. Delaney.

DELEGATE DELANEY: Could you give me a definition of true equality? Is this true equality in your mind, or my mind, or somebody else's mind?

DELEGATE DRUM: I think it would be a judgment call of a fair third party. I think—if you were to say, "I think I should pay so much in the way of taxes," and someone else would say, "I think I should pay so much"—well, it may be equal in their own minds, but it may not be equal in the others'. So I think an impartial third party should be brought into the picture, and I think this is what we are trying to do with the State Legislature.

DELEGATE DELANEY: As a—Thank you, Mr. Drum.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Delaney.

DELEGATE DELANEY: In order to receive true equality or to receive any equality under the majority proposal, this would be by the state. And I think it has been kind of—quite well brought out that you would probably have to come to the state to get any equalization and you remove all your local equalization, your local County Commissioners as the Board of Equalization. You're looking to the state for any equalization within your county, within your individual. And, as Mr. Lorello brought up, if you didn't feel that your house or your ranch or anything was equal, you would have to come to the state. You are eliminating your local County Commissioners as Boards of Equalization. And I ask you just to read Mr. Eskildsen's proposal. He is providing for equalization. He is providing for a board that will continue on 6-year terms. Not a board or a man that varies with every session of the Legislature or every change of Governor, a board that is sitting there to provide equalization. And if you will go ahead and read the rest of that, it says "shall increase, decrease, or otherwise adjust the assessed valuation of property established by the judging—taxing jurisdiction to insure a fair, just and equal valuation of all taxable property between the different classes of property and between individual taxpayers." I think—I don't think Mr. Eskildsen is asking for or advocating unequal taxation between counties, between individuals. He is asking for equalization, through a board that will be sitting there for a period of years, not that varies with every Legislature, every change of Governor. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Will Mr. Delaney yield?

DELEGATE DELANEY: Yes.

CHAIRMAN GRAYBILL: Would you show the Chair where it says, in Section 3, that what you said will happen will happen? I don't understand your point.

DELEGATE DELANEY: "The power of taxation will be equalized by the state in the manner prescribed by law."

CHAIRMAN GRAYBILL: How does that mean that it's going to change every year?

DELEGATE DELANEY: It will be prescribed by law. Certainly, the intent, as described in their comments, is to set up state equalization—state—turn it over to the Legislature to provide the state equalization.

CHAIRMAN GRAYBILL: It doesn't say that. I can't see it. All right, Mr. Delaney, thank you.

Mr. Brown.

DELEGATE BROWN: Mr. President. I would like to try and help Mr. Drum answer Mr. Conover and Mr. Delaney. If they'll go to Section 7, it provides for an independent board appointed on a 5-year basis. This board is independent of the assessing board or body. However, it may be fixed up by the Legislature. Now, as an attorney, I've had experience with trying to get equalization. Under our present method, you get equalization by the same people who assessed your property—it's a frustrating experience and you're normally very unsuccessful—and then you'd have to go to a District Court. This majority provides for this Tax Appeals Board. If you read the latter part of it, it gives you the right to have hearings in your county by an independent man who had nothing to do with the assessment. I've had experience with other administrative boards in Montana, and they do come to your own district. So we have complete protection by an independent board that's much preferable to the present system. So I support the majority.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Will Mr. Eskildsen yield to a question?

CHAIRMAN GRAYBILL: Mr. Eskildsen?

DELEGATE ESKILDSEN: I'll try.

DELEGATE HABEDANK: Mr. Eskildsen. I apologize for probably not hearing an explanation you may have made. I listened to your entire presentation. I've been called from this body three times by people in three different areas of the state who have been informed that the proposal—the majority proposal will change valuations to a market value rather than the present valuation. I have answered each of these that I heard your presentation, but I can find nothing in Sections 3 or 7 which provides for valuations on the market value basis rather than the same basis as we may have now. If I am in error in this, please inform me as quickly as possible, without the 15-minute presentation which you made stating it would be all market value.

DELEGATE ESKILDSEN: Mr. Chairman. I'll try to do that. All right. Now, in the Constitution, it says that it shall be just and equitable. Now, when we take that out of the Constitution, then we go to statute and we go to the Legislature, and they say fair—when they say that it's going to be—in the statutes, it doesn't say just and equitable. It says that it shall be market value. These are the differences what the—between what the Legislature can do and what the Constitution says shall be done. I think that income should be considered in assessing property. It has to be. Now if you go to the—take this out of the Constitution, then you're reverting back to the statutes, and this is where the difference is.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. Eskildsen yield to another question?

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: (Inaudible)

DELEGATE HABEDANK: There would be nothing to stop the Legislature from changing the present law which says all property shall be assessed at full value, is there?

DELEGATE ESKILDSEN: Mr. Chairman. No, there wouldn't; but there isn't anything saying that it would change or that it wouldn't change it in some other way. I merely say that in the Constitution, it says it shall be just and equitable. And that's the reason I want it in the Constitution, to show that it will be just and equitable and not just fair market value.

DELEGATE HABEDANK: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Will Mr. Eskildsen yield to another question?

CHAIRMAN GRAYBILL: Mr. Eskildsen?

DELEGATE ESKILDSEN: I yield.

DELEGATE HABEDANK: Will you point out to me in your amendment this "just and equitable", any more than is contained in Sections 3 and 7? As I read your—I'll read what I think is pertinent. "The duties of such boards shall be to adjust and equalize the valuation of taxable property within their respective counties." Then you go on down and you further say, "The State Board of Equalization shall increase, decrease or otherwise adjust the assessed valuation", and so forth, "to insure a fair, just and equitable valuation of all taxable property." Is that the difference that you're hanging your hat on? The "just and equitable" down in the body?

DELEGATE ESKILDSEN: You bet. That "just and equitable" is really important, as far as I'm concerned. It's in the Constitution.

DELEGATE HABEDANK: In other words, if the majority proposal had "just and equitable" in it, you would have no objection to it?

DELEGATE ESKILDSEN: Well, it would certainly help the majority proposal. But the difference between the majority proposal and my proposal is that I am in favor of a continuation of the board. Their—the reason—we could compromise on this other stuff, but we could never compromise on their idea that it might stay this way or it might be one man appointed by the Governor to sit at his pleasure or my—my thought is that it should be the board, and I want to keep the board. And that's the difference between the—the reason why we couldn't compromise.

DELEGATE HABEDANK: Thank you.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman and members of the committee. I was a member of the Legislative Council subcommittee which Mr. Berthelson referred to as being great authorities in this field we're discussing, and we spent two years studying the Montana property classification laws. We worked and studied hard. We studied every facet of taxing property in Montana. The complexity of taxing property was overwhelming to the committee. My conclusion was that the present system, under the State Board of Equalization, works amazingly well overall. It is flexible enough to stand the test of time and changing economic fortunes. The Legislature is presently working on a method to improve the operations of property taxation in the state, and we presume our present—if we preserve our present system, the deficiencies which exist now may be corrected by future enactments of the Legislature. Increases such as Mr. Eskildsen mentioned in taxes for agriculture, combined with low prices for wheat, dock strikes, and so forth, would put agriculture back in the position they had in the early thirties, when a good share of agricultural land was abandoned because the operators could not pay the taxes. The way it would probably operate now is that the farm operators would have to sell off part of their property or borrow more money against the land to pay their taxes until the loans become too top-heavy and the banks have to foreclose. The whole question of property taxation requires a great judgment factor from the people charged with the responsibility of doing the same. My Legislative Council study indicated that the Legislature, in wrestling with the problem over the years and changing the laws, really didn't improve the situation very much. And I doubt that they would be able to do so in the future. True equalization is like perfection. It's a beautiful goal to be strived for but one which will probably not ever be reached. It's for this reason that I support Mr. Eskildsen's proposal. It retains a system that I think works as well as any system can in the field of property taxation. We could throw this system out and experiment, but my prediction is that history will show that—25 or 50 years from now—that as many imperfections still will exist as we have at this time. I support the substitute motion and retaining local control.

CHAIRMAN GRAYBILL: Mr. Wagner.

DELEGATE WAGNER: Would Mr. Eskildsen yield?

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: (Inaudible)

DELEGATE WAGNER: Mr. Eskildsen, under the present State Board system, couldn't all property be assessed at full market value also?

DELEGATE ESKILDSEN: Yes, I suppose it could be this—but you got to realize that it says in here too "fair and just", and this is what the board has used. They have used the fair and just method where they also take into consideration income of property, not just market value of property. And that's the difference.

CHAIRMAN GRAYBILL: Mrs. Warden.

DELEGATE WARDEN: Mr. President. I would just like to say that I was considering, when we were asked on committees—what committee to be on, and I would have liked to have been on this one. But I was a little bit timid when I figured all the powers and brains that would be on it. And I would like to stand and say that I'm delighted with the majority report on this. I feel that this gives flexibility; it takes a lot of statutory law out of the Constitution. And I think that we will have a much better equalization program because of this proposal by the majority, and I firmly support it. Thank you.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman. I'm kind of troubled. A couple of times, at least, this morning, I have heard that the State Board of Equalization doesn't have any power to do these things. I just want to read part of the constitutional powers in our present Constitution. "The State Board of Equalization has these powers: to change, increase, or decrease valuations made by County Commissioners or equalized by County Boards of Equalization and exercise such authority and do all things necessary to secure a fair, just and equitable valuation of all taxable property among counties, between the different classes of property, and between individual taxpayers. Said State Board of Equalization shall also have such other powers and perform such other duties relating to taxation as may be prescribed by law." Now, our present Constitution gives the State Board of Equalization the power to change any equalization made by a County Board or anything like this in the state. Plus, it gives the Legislature the power to give the State Board of Equalization any other powers as they want to—wanted to prescribe to it by law. Now we go to Section 3, and we're going to leave it all up to the law. Our present Constitution, it seems to me, gave the State Board an awful lot of constitutional power, and now it will all be law power. I cannot see how, if we couldn't get it done with all this constitutional power, we will get it done with just a little bit of law power. And so I'm going to support Mr. Eskildsen's amendment.

CHAIRMAN GRAYBILL: Mrs. Mansfield.

DELEGATE MANSFIELD: I represent Judith Basin County, Chouteau, Hill and Liberty. And this week, I have been besieged with phone calls, telegrams and letters from my four rural areas, urging that we retain Section 15 and 16 in Article XII. As you know—and I know the ranchers know that it takes a good hundred acres of good grassland to support one cow. And during a drouth or a rain time, when there is an act of God, this land can change in valuation. It can go from $10 in pasture land to $200 or more in wheatlands. We must retain the Board and—so that they may change, as Mr. Gysler says. I urge you to support this amendment. Thank you.

CHAIRMAN GRAYBILL: Mr. Wagner.

DELEGATE WAGNER: Would Mr. Eskildsen yield to another question?

CHAIRMAN GRAYBILL: Mr. Eskildsen?

DELEGATE ESKILDSEN: I yield.

DELEGATE WAGNER: Mr. Eskildsen. Should the State Board of Equalization decide to assess property as full market value, what recourse, under our present Constitution—or under your amendment, would we, as taxpayers, have to adjust this down to a fair and equitable basis? We could not go to the Legislature, I don't believe, since the State Board seems to have powers beyond the Legislature.

DELEGATE ESKILDSEN: Mr. Chairman. That was kind of a long question. I hope I got it all. But if the State Board was to reverse theirselves now, from the way they're acting, the first thing that would happen is that they would end in the courts, and the courts would decide whether it should be just and equitable or whether it should be actual market value. That's where you'd end up, in the courts.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Maybe I can throw some light as to where you people are getting all your wires and letters. On February 18th, there was a letter sent out to County Commissioners and County Assessors, and it was signed by Leslie Joe Eskildsen. Here, in part, is what it says. "This section removes our County Assessors, our County Boards of Equalization, and our State Board of Equalization, leaving property subject to taxation by a single Tax Administrator appointed by the Governor." And farther on it says, "It will be necessary that they employ a large staff of appraisers and technicians, simply to check the work being done by the State Administrator and his staff. This is an uncalled-for duplication, in my opinion. I further do not believe that our local taxpayers should be required to travel great distances to have their property tax appeals heard." Then further down, "Please call your delegates today and urge support for retaining Sections 15 and 16 of Article XII." I think that explains a lot of your letters, telegrams and phone calls. I just thought the delegation ought to know.

CHAIRMAN GRAYBILL: Mr. Skari.

DELEGATE SKARI: Mr. President. I also am concerned about the taxes on agricultural land going up two and a half times, as has been pointed out here. But I think with the exchange of conversations we've had here between Mr. Wagner and Mr. Eskildsen and others, I feel that that really is not founded. I, too, have had telegrams from County Commissioners that are concerned, and I have discussed with them over the phone. I think, largely, that they are somewhat misinformed here. I think we have inequities now—in the present system. I know Mr. McDonough cited some cases where farmland was assessed at $10 an acre on one side of the fence and $8 on the other side—or 10 and 6. I know, in my own area, there—in my county, it was assessed at $10, and there wasn't even a barbed wire fence, and the other side it was assessed at $5. Now, I'm sure the people in my area are not satisfied with that system. Also the personal property tax on the state level. Personal property in my county was assessed at about $225 per household; and an urban area, it was assessed at $25 per household. This is inequitable. I want fair taxation. I want it for farmers; I want it for everybody. I think we have to take our County Assessors off the hook here, too. They're in a rather bad position. I think the present constitutional powers to the State Board are clumsy and rather unworkable. And I—it seems to me that we could only gain from the majority report, and I support it.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President. Taxation is one of the more complicated things in government. I spent two years on the Taxation Committee, trying to delve into all the facets and ramifications of taxation. It requires a lot of study and a lot of concentration of study. Now, we are talking here about removing the State Board of Equalization. The State Board of Equalization was created with these thoughts in mind, that we should have an agency that would be somewhat insulated from politics, that they could make fair and equitable judgment on how property should be assessed in the State of Montana. This board, of a necessity, has to have some independence to be able to arrive at the difficult decisions on equity of assessment. If you remove this board and go to an administrator, you have one man that will be performing these functions. He will be subjected to many pressures, from special-interest groups right on down the line, as to how they can get some favors in the assessment of their property. I submit to you that it is much more difficult to get favors from three men than it is one. We could go on and on and on and talk about taxes. We're going to have to pay more taxes; there's no doubt about that. I would submit to you that perhaps your next budget that will be submitted to the Legislature might be pretty close to $250 million. It has that aspect now. Where is this money going to come from? Think about this a little bit. Do you want one man that is going to sit down and try to figure this out? Would you rather have a board that is insulated a little bit away from politics so that they can make an impartial judgment of where this money is going to come from? I submit to this delegation that if the thinking of people out in the districts and out in the state means anything to you, you better listen a little bit to what their thinking is. I have on my desk some 30 or 40 letters and telegrams. Some of these telegrams have 15 and 20 names attached to them that solicit retaining the State Board of Equalization. And these are not just people that are jumping up out of the bushes, as Mr. Rygg would seem to indicate from Joe Eskildsen's letter. I had many of these letters shortly after I came up here. I represent five counties. I talked to each set of County Commissioners in those five counties before I came to this Convention. And I asked them this particular question, because I had seen in the reorganization plan that they recommended the abolishment of the State Board of Equalization. There wasn't any hesitancy at all on the part of any of these Commissioners—they wanted that State Board of Equalization retained: we feel that we could work with this board in the equalization of taxes; we would—suggested, however, that this board be adequately funded and adequately staffed to do the job. I think this is one of the fundamental, basic problems that has beset this board from the time of its inception. And it has not had the staff; it has not had the auditing power to go out and really take a look at the various properties, facilities, large companies, and so forth, to be able to really do the job. I think that the State Board of Equalization does have, and will have, the flexibility to cope with the increased tax burdens that we see, that will be developed and put upon the people of the State of Montana. Looking at the tax sheet that was presented to you—now, there's two sheets. We only have one of them in front of us, but the Montana Assessors Association prepared a sheet and, lo and behold, when the two got together, they showed the same figures. Now, we can go back, if we want to talk about letting the Legislative body do this, and we can consider the directive that came out of the 1949 session that said "All properties shall be assessed on a market value basis". Fortunately, we had the State Board of Equalization, and they were troubled by this directive and they went to the Supreme Court and asked them what their interpretation of this would be. And the Supreme Court told them that this would not provide a fair and equitable tax situation across the State of Montana, and the courts advised the board to proceed the way they are doing now. If you hadn't had the Board of Equalization, you would have, at that time, immediately went to market value taxation. If you look at the sheet before you, if you do go to market value taxation, look at the differentials. Look at what happens to net proceeds, utilities, other industry, and you will see that those taxes from those companies drop dramatically. But you look at your homes, your land, your real estate, your town property, and see what happens to them. In most cases, they would go up from two to three to very near four times the present taxes that you're paying now. Ladies and gentlemen, if we are going to heed what the people want, we are going to have to pay some attention to what their requests are. They were not, as I said before, brought up out of the bushes by Mr. Eskildsen's letter. These people have been thinking about this for three or four months. Some are dedicated County Commissioners. And I submit to you that most counties do have perhaps some of the more levelheaded, sensible-thinking people in their Board of County Commissioners as you can find anywhere in the state. And when these gentlemen, who have attended many tax meetings at the state level and thought these things out, and the ramifications of the tax problems, when they urge you to retain this State Board of Equalization, I think you should pay some attention to them. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. The question arises on Mr. Eskildsen's amendment to Section 3, which replaces the present Committee Proposal for Section 3 with a proposal that retains the State Board of Equalization. Now, the Chair intends to let everyone speak at whatever length they insist, but the Chair intends to try and get a vote on this matter before lunch.

Mrs. Pemberton.

DELEGATE PEMBERTON: Thank you, Mr. President. I will speak very briefly and very pointedly. I'm speaking, not from any telegrams or other influences, but from the confidence of the people from 10,000 square miles of Montana and others representing Montana's great agricultural and livestock industry who know that the delegate from District Number 1 will speak for them when the time comes. So, after 42 years on a third-generation cattle ranch, this delegate speaks from the northwest quarter of the northwest quarter of Constitutional Hall, and I speak for the retention of the Board of Equalization as pointed through Joe Eskildsen. Thank you.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman. I see nothing in the proposal of the committee that would warrant the fears that have been expressed this morning. I can only wish, Mr. Chairman, that more of our committees had met in the Mitchell Building. Thank you, sir.

CHAIRMAN GRAYBILL: Mrs. Van Buskirk.

DELEGATE VAN BUSKIRK: Mr. Chairman. It seems to me that a lot of us are assuming what may happen under this adopted Section 3 of the majority report. But there is one question that arises in my mind. If we are going to finance a statewide education program—and also in our public health, welfare, labor and industry, we are proposing a statewide welfare program—how will this affect the tax system throughout the state? May I ask Mr. McDonough this question?

CHAIRMAN GRAYBILL: Mr. McDonough, would you yield?

DELEGATE McDONOUGH: If there is a statewide financing of education and if there is a statewide levy for welfare, which is quite problematical, because maybe the federal government will take that over in the end anyway—actually, as we said before, unless these are equalized, then you don't have a fair levy of taxes to support education if it's a property tax. And like Mr. Skari pointed out, that if the land is $5 in one county and $10 in the other, the fellow with the—in the $10 county is paying twice as much taxes for school than the fellow in the—with $5. That's how that's going to affect taxes unless some attempt is made to equalize these taxes better than what they're done now.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. President. I'm going to watch the clock very carefully, because I don't like to miss my lunch. But I think that this is more important than eating, because it may affect the breadbasket in years to come. Now, some of you are worried here about the property paying the bill of the schools; and I am too, worried about that proposition. In fact, I am going to introduce a section which is going to limit the right of the state to levy property taxes. Now, you may say that's going to violate the principle of the state supporting our schools on equitable basis. We have other means of raising money to support our schools, even if the sales tax was defeated, even if income tax is unpopular. Nothing says, in the Serrano case, that we have to support the schools by property tax. I firmly believe that property taxes should be used for a local purpose, for county government, for city government, and for any additional purposes that the schools may desire. I believe that, and I'm going to fight for it. And now I want to tell you my personal interest in this. Some of you have been telling your personal interests. I am not a big landowner, but I rent land, and I know what the landowner—the landlord makes on his property, and I know he cannot stand to pay many more taxes. And I am confident, too, that any State Board will keep this in mind. No taxing agency is going to tax an industry out of business. I know some of you people are looking longingly at the grasslands of eastern Montana. I know you are looking longingly at the Williston Basin for some of this revenue. And by the way, you are getting some of the revenue from the Williston Basin. Whenever oil is found on school land—and by the way, a couple of weeks ago, one of the biggest wells in the Williston Basin was on school lands, and the State of Montana is going to profit by that well. And I know I'm speaking, now, for the rest of the oil in Sheridan County, for Roosevelt County, and for the other counties that have oil. We are concerned about—we're selfish; we want to maintain it there; we want to keep it there. And I know you people who don't have it would like to have some of it. But, actually, it isn't going to help you very much if it's—if you scatter it throughout the State of Montana. It's going to have just a dent in the tax load. Now, I have watched this tax proposition for a long time. Ever since I was in the Legislature, I've tried to do something about it. We know that taxes are inequitable; we know that the assessments are inequitable. I'll give you an illustration. I went to pay my personal property taxes one day, and I had them assessed at $1,000. That is with my refrigerator and the different things we have in the house. I presented this to the Assistant Assessor, and she said, "Oh, my God." I said, "I know I'm lying like the devil. If you want to higher it, go ahead and make it higher. I don't care." You know what she said? "You're too high." So I said, "Okay, leave it the way you want to; I don't care." So I walked out and I mused a minute and I said, "Well, my gosh, if I'm too high, what are the rest of them doing?" So I went back in again and I said, "Give me the assessment of eight different people who had about the same kind of a house and household goods as I had." And do you know what I found? Did you ever try that? You try it. That varied from $250 assessed valuation to $1,800 in assessed valuation. Now is that fair? Is that equitable? And you don't have to go to personal property. You can go to real property, like it has been mentioned. I'm sick and tired of the land being assessed higher than the land over here. And a lot of people are being—are sick of that. One of my County Commissioners called me a week ago Sunday. "I'm afraid of this thing that you people are proposing. I don't know what it's going to do." "Well," I said, "I've talked to you people a long time ago. Why don't you get this assessment equitable?" "Well," he said, "we are trying. We would like to have it equitable. We would like to be on the same basis as Roosevelt and Daniels County, but we have no force that makes us do it. We have no one telling us to do it." And this is what we want today. We want some force that gets to these County Commissioners or these taxing authorities to make this equitable. I may be not able to go home after I say this, but I'm for the majority report. (Applause)

CHAIRMAN GRAYBILL: Very well. Mr. Mahoney.

DELEGATE MAHONEY: Mr. President. I've listened to a lot, and I've probably fought more with the State Board of Equalization than any person in this room. I was on the Tax Committee in 1957 to '59, and we certainly went over this reclassification. I want to tell you that I was a convert to the reclassification program. They had an awful time with me. I was afraid of it because I was afraid we was going to get just about what we got. And I think that we lost $5 million in it. By doing it, it cost the people. Now, I think the system is right. I don't think that we should go out here and abolish the County Boards of Equalization. This is what you're doing. Get down here where the people can get to these people and talk to them. And the—what you're doing—I just heard that what you do, you're taking it out of the Constitution, then placing it back in the hands of the Legislature. This is what you're doing just as pure and simple, because it will be abolished if the Constitution is adopted, and I think it will. This local board, the only people you're going to have in this plan—and we're only discussing the other section; we'll come later on to the other section—I want to stay within the section we're discussing. They have this other plan of five appointed appraisers, I guess you'd call it. Now, right now, in Cascade County, the State Board of Equalization cut the Anaconda Company property. The County Commissioners have now hired somebody to go back and reappraise the Anaconda Company's power property in Great Falls. If this comes, I don't know that we will have that power under the next session of the Legislature. This is a committee here today of—made up of people the same as going to sit in the next Legislature, if we have a unicameral body. They're the same—going to be elected from the same places and the same state that we have now. Now, I feel that we don't want to turn around here and abolish that local Board of Control. I don't know what the other government is going to say about this proposition of elected officials. We may wind up and have our County Assessors appointed. I remember there's a—the Mayor of the—now Billings came out a few years ago and stated that he wanted one State Assessor. And I looked at him funny. I can see it coming closer all the time. We will have one office sitting up here in Helena that's going to do all the appraising, all the assessing, all the levy. Now, as to the Serrano case; I think we're using that very much more than is necessary. As I see Montana today, and I might be wrong, you have sitting out here first on your levies—when the State of Montana sets up a basic foundation program, if they match the foundation program 100 percent, I cannot see the Serrano case any problem here. The point is, their Legislature is not matching the law that they said is the basic foundation program. Anything above that is extra that the districts themselves want, to have some cream on the cake. I think this is something to watch. As far as the welfare, I've got to say that Delegate Van Buskirk was right. When it came to us, they want to take the welfare program out of the county—and I think ours—we have now made it a legislative responsibility in the committee I'm on. But all of this bases back to property tax. Nobody's got any madder at the Board of Equalization than I have, I'm telling you. And I have fought with them, because I think they haven't done their duty. But I'm not sure that if we go out and create another board—and I see this group here has been very much on not. I noticed that in the Department of Agriculture last night that was presented and adopted, there was no confirmation. And maybe this might come, so this person that—one person that's got—this is on the board over there today on—not the property tax. It's the only one that's still in under the Board of Equalization. It's under a new one-man board or commission. I don't know what you'd call it, but I hesitate, and I hate to take away people's—this local people's rights to have their own board down on that county level. Thank you.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Mr. President. The majority of the people in the three southeastern counties of Montana are very vociferous about their rights, and especially in this field. They really support our State Board of Equalization and our State—or our County Commissioners. And they're very fearful of any change in this department. I strongly support Mr. Eskildsen's amendment.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman. I've listened carefully to all this, and I'm not yet convinced that our present system is working perfectly. And I am not convinced that the majority of the people think it's working perfectly and want it kept exactly as it is. I support the majority proposal because I think it has the possibility of bringing fair and equitable taxation.

CHAIRMAN GRAYBILL: Mr. Ask.

DELEGATE ASK: Mr. Chairman. I didn't intend to speak on this, and I'll be very brief. But I am very concerned over this section and what has been said here today. I think we're arriving at a division between the rural and the urban areas of Montana on this Constitution. I ran and came up here with the idea of improving our Constitution, not necessarily doing away with a lot of things. And I think we have—so far, we have done that. There was a lot of talk about the Justices of the Peace. We didn't do away with them; we improved them. Executive, Legislative—I think we've improved them; we didn't do away with them. Now we come to the State Board of Equalization and the County Board of Equalization; and maybe it shouldn't have been in the old Constitution, but it's there. What are we going to do with it? It hasn't worked perfectly, so are we going to do away with it? I submit, let's improve it. I would hate to have this—I would hope that whatever we come up here with is maybe a compromise—that we can go out and have all of the people support the new Constitution. Now, in listening this morning, we find that the majority said, "Well, we're not going to abolish the State Board of Equalization." Maybe they're going to use it. Why can't we leave it in the Constitution and improve it? Apparently there are just a few words in this particular section of the old Constitution that has been—hide-bound the Legislature from this equalization of taxes. Maybe Mr. McDonough knows the words that are in here that has been in the cases that have held back proper enforcement of equalization. So why don't we adopt Mr. Eskildsen's motion here on the Board of Equalization and the County Board of Equalization and then get down to the wording here to put some power so that we can get equalization throughout the state, rather than going out of here with a state agency that's going to do all the assessing and going home. They're going to ask you—(Inaudible)—we'll say no. Why don't we improve what we have, rather than doing away with it? Thank you.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Will Mr. Ask yield to a question please, Mr. Chairman?

CHAIRMAN GRAYBILL: Mr. Ask?

DELEGATE ASK: Yes.

DELEGATE REICHERT: I wonder if you could explain to me, in Mr. Eskildsen's proposal, how it can be improved. It looks—it appears to me that it is much the same as what we have in our present Section 15, and I'm wondering just how you envision improvement in our system with this proposal.

DELEGATE ASK: This is—the first I'd seen it was this morning, and I haven't read it, but I gather it's very close to our present Constitution.

DELEGATE REICHERT: It is.

DELEGATE ASK: And apparently there is—the wording in here—

DELEGATE REICHERT: It's actually identical. I wonder—that's why I don't understand the improvement aspect.

DELEGATE ASK: Well, apparently, it's the wording in here that gives the board the power of valuation and adjusting, et cetera.

DELEGATE REICHERT: I'll read you from the present Constitution. It says the same thing.

DELEGATE ASK: Yes. Maybe we ought to change that wording so that the Legislature has some—a little bit of control over the State Board of Equalization, so that they can pass laws that will make taxation more equitable. That's what I'm after here. Let's improve our system, not do away with it. And I think there's some wording—in fact, I really don't like the wording of the whole section that—but I think it can be improved.

DELEGATE REICHERT: Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Thank you very much. I appreciate that.

CHAIRMAN GRAYBILL: Mr. Siderius.

DELEGATE SIDERIUS: Mr. Chairman. Due to the inequities in our county in the past few years and due to the fact that I have received no telegrams opposing the majority report, I support the majority report.

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman. It seems to me we've been all around the horn and what we're finally finishing up with is the fact that—do we want the assessment to be done on a political basis, or a nonpolitical basis? That's really all it boils down to. When the State Board of Equalization was put in the Constitution, it was put in there particularly to get assessment and appraisals out of the political arena and put them on as good a nonpartisan basis as it could be. That was the purpose of it. Now, we—it's been since 1922—and it seems like we've forgotten that lesson, so we want to go back to the political organization that we had previous to that. And it seems to me that Mr. Eskildsen's proposal, with a few minor amendments which I would prefer to make if it is adopted, could accomplish the purpose that we're looking for and could also comply with the Serrano-Priest cases. When Mr. Drum made his statement, he said that the third party would be the proper person—an impartial third party. That's what this proposal establishes to do—is to set up an impartial third party to make the appraisals, to make the judgments. The—it seems to me that the committee had a little inconsistency when they say, do away with the establishing of appraisals and assessments, put them in the political arena, and yet they establish an appeal board in Section 7 which says, let's take the appeals out. Now, it seems to me that we're—there's a little inconsistency there. I don't object to the appeal provision, and I think it works fine with the amendment as Mr. Eskildsen has submitted it. Thank you.

DELEGATE TOOLE: Mr. Chairman. I—the day before yesterday, I spoke to a group at Fort Benton, a rural group—a large crowd. The general thrust of their feeling was that we're not doing our job here. We were sent down here to write a new Constitution. But they objected to the long ballot. They did not seem worried about the Justices of the Peace; they thought we should abolish them. I am no expert on the thinking of rural people, but it seems to me that judging from this meeting that we had in Fort Benton, that we've got more support from rural people than I had originally supposed for the majority's proposal. Therefore I support it.

CHAIRMAN GRAYBILL: Now, Mr. Wilson, I'm trying to get Mr. Eskildsen to close, and you did have a long time. Do you really want to speak again, Mr. Wilson?

DELEGATE WILSON: Mr. President. I just have a few words I would like to add to my previous presentation. It has been suggested here that there is quite a variation in the taxable assessments in the different counties. And I submit to this delegation that the State Board of Equalization is working just as hard as they can, and they have in all the counties, particularly in the two counties that I'm interested in. They are trying to arrive at an equal assessment, and they are reclassifying the land, and they are working just as hard and just as fast as they possibly can. I submit that all they need is more staff; and I do agree with Mr. Ask that probably we could reword this thing, if we so desire, to give the flexibility that the people seem to want.

CHAIRMAN GRAYBILL: Mr. Eskildsen, you may close.

DELEGATE ESKILDSEN: Mr. Chairman, in case I forget it when I sit down, I'd like to ask for a roll call vote.

CHAIRMAN GRAYBILL: Very well.

DELEGATE ESKILDSEN: In closing—it won't take me but a couple of minutes—I would like to answer the Chairman's remarks that I sent out a letter. Of course, I sent out a letter; that's what I'm here for. We don't want no surprises back home; we want the people to know what we're doing. I told them exactly what 3 was. It sets up a statewide way of appraisal, assessment and equalization—statewide. It does away with the County Commissioners and the County Assessors. If the Legislature decides they want to use this same group, what have you improved other than that you took the State Board out of the Constitution? Unless you appropriate more money, unless the Legislature appropriates more money, you're not going to have anything different than you've got now. The secret to the whole thing is enough money to do the job properly. One thing that the Chairman also forgot to mention is there was another letter went out under the name of Mr. McDonough. So I wasn't the only one sending letters out. I think that both sides should be heard over the state, and I submit to you that I got a pile of stuff here. You can't imagine how much there is in there. I imagine there is 300 letters there from over the state, supporting me. I doubt if any of you can produce at least a dozen letters on the other side. I think that to put in Section 3 would be a step backwards toward political control of the State Board as the governors vary from year to year. I ask that you support my motion to delete Section 3 from majority plan and to adopt my substitute motion. I ask for a roll call vote.

CHAIRMAN GRAYBILL: Very well. We'll have a roll call vote on this issue. The issue is whether or not to adopt Mr. Eskildsen's amendment, which has the effect of making the State Board of Equalization constitutional, in place of Section 3 as proposed by the Revenue and Finance Subcommittee. All those in favor, vote Aye; all those opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please cast the ballot.

Aasheim	Nay
Anderson, J.	Aye
Anderson, O.	Nay
Arbanas	Nay
Arness	Excused
Aronow	Aye
Artz	Nay
Ask	Aye
Babcock	Aye
Barnard	Nay
Bates	Nay
Belcher	Aye
Berg	Nay
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Nay
Brazier	Nay
Brown	Nay
Bugbee	Nay
Burkhardt	Nay
Cain	Nay
Campbell	Nay
Cate	Nay
Champoux	Nay
Choate	Nay
Conover	Aye
Cross	Nay
Dahood	Nay
Davis	Nay
Delaney	Aye
Driscoll	Nay
Drum	Nay
Eck	Nay
Erdmann	Aye
Eskildsen	Aye
Etchart	Aye
Felt	Absent
Foster	Nay
Furlong	Nay
Garlington	Aye
Graybill	Absent
Gysler	Aye
Habedank	Nay
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Nay
Harlow	Nay
Harper	Nay
Harrington	Nay
Heliker	Nay
Holland	Excused
Jacobsen	Nay
James	Nay
Johnson	Aye
Joyce	Nay
Kamhoot	Aye
Kelleher	Absent
Leuthold	Aye
Loendorf	Nay
Lorello	Aye
Mahoney	Aye
Mansfield	Aye
Martin	Nay
McCarvel	Nay
McDonough	Nay
McKeon	Nay
McNeil	Aye
Melvin	Nay
Monroe	Nay
Murray	Nay
Noble	Aye
Nutting	Aye
Payne	Excused

Pemberton	Aye
Rebal	Aye
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	Aye
Rygg	Nay
Scanlin	Nay
Schiltz	Nay
Siderius	Nay
Simon	Aye
Skari	Nay
Sparks	Nay
Speer	Nay
Studer	Aye
Sullivan	Nay
Swanberg	Aye
Toole	Nay
Van Buskirk	Nay
Vermillion	Aye
Wagner	Nay
Ward	Nay
Warden	Nay
Wilson	Aye
Woodmansey	Aye

CHAIRMAN GRAYBILL: Mr. Romney, for what purpose do you rise?

DELEGATE ROMNEY: I inadvertently hit the wrong button, and I can't do anything with it now.

CHAIRMAN GRAYBILL: I think you were saved, Mr. Romney.

CLERK SMITH: Mr. President, 32 voting Aye, 63 voting No.

CHAIRMAN GRAYBILL: 63 having voted No and 32 having voted Aye, Mr. Eskildsen's amendment fails. The Chair has no other amendments proposed for Section 3. Does anyone intend to propose other amendments for Section 3?
Mr. Davis.

DELEGATE DAVIS: Mr. President. I have just a deletion amendment, which I have written out. But it's to delete from Section 3 the words "by the state". And I move that—

CHAIRMAN GRAYBILL: Well, Mr. Davis, if you're going to make an amendment of that nature, we'll take that after lunch. I just thought if we weren't going to have any more amendments, we'd settle it.
Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. I move the committee recess until the hour of 1:30 p.m. this day.

CHAIRMAN GRAYBILL: The motion is to recess until 1:30. All in favor, say Aye. Oh, wait a minute. Just a moment. Before we announce the vote, I want Mr. Schiltz to have a chance to make his announcement and the Chair has an announcement.

DELEGATE SCHILTZ: Mr. Chairman, I announce a meeting of Style and Drafting Committee immediately, and we can go in and out for lunch so long as we have quorum.

CHAIRMAN GRAYBILL: Very well. The purpose of our 1:30 luncheon is to give Style and Drafting a little bit of time here. Very well, we're in recess until 1:30.

(Convention recessed at 12:17 p.m.—reconvened at 1:36 p.m.)

CHAIRMAN GRAYBILL: The Convention will come to order. The committee will be in session. Under the rules of the committee—under the rules of the Convention, delegates are allowed to rise to personal privilege, and Mr. Foster has asked for the floor.
Mr. Foster.

DELEGATE FOSTER: Thank you, Mr. President. Fellow delegates, recent news articles have interpreted my debate Thursday to cast discredit on the voting records of delegates from Silver Bow. This was in no way my intent. I was attempting to draw attention to the need for all delegates to support a reclamation provision in this Constitution and was intending to appeal to Silver Bow delegates for their support in the interest of all Montanans. Any interpretation of my remarks in the heat of debate to in any way suggest any delegate of this Convention is not discharging his voting right in good faith is in error. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Very well. Before the recess, we were debating Section 3 of the Revenue and Finance Proposal and Mr. Eskildsen's motion was defeated. There are—there is at least one other amendment proposed to Section 3.

Mr. Davis, would you like us to read your amendment, or do you want to make it?

DELEGATE DAVIS: Mr. President. I move to amend Section 3, Property Tax Administration, by deleting the words "by the state" and inserting in lieu thereof "as shall be just and equitable", so it would then read: "Property which is to be taxed shall be appraised, assessed and equalized as shall be just and equitable in the manner prescribed by law."

Mr. President.

CHAIRMAN GRAYBILL: We take out "by the state" on lines 12 and 13, right?

DELEGATE DAVIS: Yes, sir, and insert, if you would, please, in there, "as shall be just and equitable."

CHAIRMAN GRAYBILL: Very well. Mr. Davis has proposed an amendment to Section 3 to strike the words "by the state" and add a phrase so that the section would read: "Property which is to be taxed shall be appraised, assessed and equalized as shall be just and equitable in the manner prescribed by law."

Mr. Davis.

DELEGATE DAVIS: Mr. President, fellow delegates. I listened to the arguments this morning, and despite the fact that the present Constitution says we will adjust and equalize—the board will—between the counties and between classes and despite the fact our Supreme Court has held that additional powers could be given to them to do this by the Legislature and despite the fact that a telegram was received from my Commissioners to support Mr. Eskildsen, I voted against his proposal. But I do think, in your arguments this morning, that were very persuasive, that we have somewhat of an inconsistency. When you talked about locking all these other words in the Constitution to make them flexible—when you put in "by the state" does not give the flexibility, it would seem to me, that you're talking about. When you assure various people with—by question that this would not change the situation necessarily as it is now, as far as your local county assessment is concerned, I submit that it would. You are still going to have to have your assessment records at the county level. You are going to have to have a County Assessor, whether he's appointed by the state or whether he's appointed by some other method. You're still going to have to have all those records. This is an idealistic dream, if you think it's going to solve all these problems by just putting this in in these few sentences. So if you're going to be consistent, I submit that "by the state" would permit the Legislature to continue with the office of the County Assessor to assess under guidelines that are submitted, as they do now, to assess or to appraise and to keep that office functioning at the local level, rather than create a state bureau, another board. In the interests of reform, we continue to create more boards and more bureaucracy and the same people that want to have the people represented, one man-one vote, turn around and want to create probably the biggest bureau or board in the State of Montana. Now, my county did reclassify. They spent thousands and thousands of dollars and hired a reclassification firm from Denver, and they reclassified to the extent that I'm sure that we're paying a lot more than our neighboring counties. But the fact that many, many counties have reclassified—they have great abundance of valuable records in the county that have been taken care of on a county basis, and I'm sure you're going to want the counties to pay their burden of this taxation by a county office that's still within the—financed by the county under your county budget system. We still need to know what our valuation is in every county for all the budgets; regardless of where the revenue comes from, you're still going to operate your cities and your towns and your schools on a budget system. So I submit that when you say you don't want to lock in wording and when you say that you are permitting the same system when you put in "by the state" this—if you strike that and put in "it shall be just and equitable", which I'm sure is what you all want—as a just and equitable taxation. But I don't think you should lock a system in, totally statewide, and keep the Legislature's hands tied as to whether they can say, we will have the County Assessor's office continue to appraise or assess, and it can be equalized at the state level—or they can appraise, assess and equalize and it be checked at the state level. In other words, they certify all these assessments to the state at this time and then they can go over the ones that haven't properly assessed as between counties and make their adjustments. But the fundamental, basic work still has to be done at the local level, and I strongly object to creating a super board statewide—possibly political appointees all the way down through every county—and tie that into the Constitution. Thank you.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Davis' amendment, which I'll repeat in case someone came in late, to Section 3, which would make the section read: "Property which is to be taxed shall be appraised, assessed and equalized as shall be just and equitable in the manner prescribed by law" and which leaves out the words "by the state".

Mr. Rygg.

DELEGATE RYGG: (Inaudible)

CHAIRMAN GRAYBILL: All right, Mr. McDonough.

DELEGATE McDONOUGH: We had some thoughts in the committee relative to these words "by the state". They were inserted in the end because we wanted to leave no doubt that the state would have this—these powers. It would preclude any other section of the Constitution of giving some local governmental officer these powers, where you would get into a conflict, and that's why we put in here the words "by the state". We do not feel, however, that this restricts the Legislature to enactment of a law that would have some state agency do it. Now, counties, as we know, are merely administrative units of the state, and so are county officers. And there's no reason under this wording why the Legislature couldn't designate the County Assessor as their assessing officer in that county or designate the Board of County Commissioners to have some other duty in the assessment process. The words "by the state" were put in just to preclude any other interpretation other than that the state has this assessing power and the Legislature has the power to control the assessments. And for that reason, I'd like to resist the amendment, so it does remain clear that the state has this power.

CHAIRMAN GRAYBILL: Is there other discussion?

Mr. Hanson.

DELEGATE ROD HANSON: Mr. President, I'd like to rise in support of Mr. Davis' motion. I think that this is somewhat of a compromise proposal and I believe will somewhat answer the objections that we have had from our rural areas. I still think that, as Mr. McDonough said, the Legislature—he didn't say it this way—but the Legislature could still handle it the way they wanted but it's possible we could have some local control.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I resist the motion, too. I'm afraid if we take "by the state" and take—and put in the words "it shall be just and equitable", we're going to defeat our—this very thing we want to do is to try and get an equitable assessment. After all, these are the words they've been working on all these years and they haven't been able to do it then, so if we take out "by the state" and put in the other, I think we're defeating the purpose that we're going to need if we are ever going to have a statewide financing of schools. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there further discussion?

Mr. Conover.

DELEGATE CONOVER: Will Mr. McDonough yield to a question, Mr. Chairman?

DELEGATE McDONOUGH: Yes, Mr. Chairman—or Mr. Conover.

DELEGATE CONOVER: The thing that I'm really concerned—would, with this amendment, would this give the County Commissioners more power—I mean, the same power that they have at the present time?

DELEGATE McDONOUGH: No, it would not. It leaves it up to the Legislature to decide whether they want to give them that power or not.

DELEGATE CONOVER: Well, what I'm getting to, it's been two sessions ago when the State—or maybe longer—when the State Legislature passed a law that all of new appraisable [appraisals] in the counties were to begin—and am I not right? Yet today, we have a few counties that have not done this.

DELEGATE McDONOUGH: Have not reclassified?

DELEGATE CONOVER: Reclassified.

DELEGATE McDONOUGH: I don't know if they have not done it. The testimony before the committee is that—certainly a number of counties that haven't equalized properly.

DELEGATE CONOVER: Mr. Chairman, may I ask Mr. McDonough if he'll yield to another question?

CHAIRMAN GRAYBILL: You bet; yes.

DELEGATE CONOVER: What I'm getting at—is there a way that we could still contain our County Commissioners as appealing board within our counties? What I mean by this is that, I think—well, I shouldn't say "think"—I know that our County Boards, County Commissioners realize the problems within the county and they know the property more than they would on a state level.

DELEGATE McDONOUGH: Well, there is—actually, Section 7 provides for that hearing in the county. Now, there has been placed on the desk an amendment to Section—I mean, a different Section 7 that requires in the appeal procedure that there be a local or county governmental level on the thing; and we intend, by that second sentence there, that if the Legislature wishes, they could certainly make the County Commissioners the local County Appeal Board if they take them out of the business of actually levying and appraising the assessment in the first place. We still want those two things separate.

DELEGATE CONOVER: Thank you, Mr. McDonough.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Conover.

DELEGATE CONOVER: If this is so and we can still have—contain this within our counties, then I'm going to support the majority proposal.

CHAIRMAN GRAYBILL: Very well. Is there other discussion?

Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, I resist the motion. Actually, if you read it—if you take "by the state" out—as Mr. Davis' proposal suggests, it doesn't really change anything in this section. Unless there was some other restriction, the state would still have that particular power. Now, if you do leave it out, then conceivably the state's power could be limited in some other area. Just as it's stated here, whether it's in or out doesn't really make any difference; but the state should have that power, the Legislature should have that power to regulate this to bring about the equalization. Now, I interpret the word "equalize" to mean exactly the same as "just and equitable". I resist the motion.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Will Mr. McDonough yield to a question?

DELEGATE McDONOUGH: Yes, sir, Mr. Wilson.

DELEGATE WILSON: Mr. McDonough, is it your opinion that the County Board of Commissioners is not qualified to make levies in a county, and therefore you wish them eliminated as a Board of Equalization in a county?

DELEGATE McDONOUGH: Well, you said "to make levies". I think they're certainly qualified to make the levies, because they do make all the county and school levies. Do you mean make appraisals, or make levies?

DELEGATE WILSON: Make appraisals, levies.

DELEGATE McDONOUGH: I think that certainly some County Commissioners are qualified to make appraisals and they're probably better qualified than a lot of other people, but I think the farther we get away from any—they're not as qualified, let's say, as some professional appraisals and they're not as qualified to make an appraisal that would be equitable for all the people of the state, as a general rule.

DELEGATE WILSON: Mr. Chairman, will Mr. McDonough yield to another question?

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE WILSON: You feel, then, that the local Board of County Commissioners is not qualified, they don't understand the situation within their county to make appropriate appraisals?

DELEGATE McDONOUGH: County Commissioners are human beings like any one of the rest of us, and I think from a statewide equitable basis—I don't think they are in all instances, no. Some of them are, and some of them have been very excellent at it. Valley County has been excellent and other counties have been excellent, but I don't think on a statewide basis, they being human beings, they are that way totally.

DELEGATE WILSON: Thank you, Mr. McDonough.

CHAIRMAN GRAYBILL: Is there other discussion? (No response) Mr. Davis, do you care to close?

DELEGATE DAVIS: If you would permit, please. In comments under the Revenue and Taxation, they state the state already possesses the power to levy taxes; they really don't need anything. But they've included in this appraisal assessment and equalization, to create the biggest super board, I submit, and the possibility of the biggest political situation—if it's all going to be appointed, by whom? The Legislature will provide that, but the Legislature is prohibited by the language in this, I submit, to include County Assessors. You can have a State Assessor for Beaverhead County or appraiser at the local level. In reply to the professional appraisal bit, I submit that the person that lives next door is the best person to keep—be honest at the county level, anyway, when they complain why someone's house or land isn't taxed as well. The last condemnation case I was involved in, the professional appraisers, at a hundred dollars a day or so for their services, varied from $12,000 for the land taken to a hundred and fifty thousand dollars. And they're professional appraisers. So there can be just as great of inequality. You're going to have to create some structure to put this in the hands of one man or another board or someone to carry out this taxation. If it's taken from the Board of Equalization, who had constitutional mandate before to equalize between counties, you're not really strengthening it except that you're putting everything in a superstate. The farther you can get from the individual, the farther you can get all of it. They could still provide a method where the state equalizes and makes you make your corrections and make you honest between counties without elimination [eliminating] the function in the county, at that level, if the Legislature thought it were wise. Also, the language that's been used here this morning in arguing—you've locked in all these other words. They want to lock in this word now with a system that they don't know whether it will work any better than the old system. I'm willing to give it a try, but I think it should be consistent and not lock it in any more than you should lock in the others. Thank you.

DELEGATE McKEON: May we have a roll call? I call for seconds.

CHAIRMAN GRAYBILL: Yes, we'll have a roll call. Very well, the issue is on Mr. Davis' amendment to Section 3 to strike the words "by the state" on lines 12 and 13, and insert in there a phrase "as shall be just and equitable", so the sentence reads: "Property which is to be taxed shall be appraised, assessed and equalized as shall be just and equitable in the manner prescribed by law." So many as shall be in favor of Mr. Davis' amendment, vote Aye; so many as shall be opposed, vote No. Have all the delegates voted? (No response)

CHAIRMAN GRAYBILL: Have all the delegates voted?
(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?
(No response)

CHAIRMAN GRAYBILL: Please take the ballot—take vote.

Aasheim	Absent
Anderson, J.	Aye
Anderson, O.	Aye
Arbanas	Nay
Arness	Excused
Aronow	Aye
Artz	Nay
Ask	Aye
Babcock	Aye
Barnard	Nay
Bates	Aye
Belcher	Aye
Berg	Absent
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Nay
Brazier	Aye
Brown	Nay
Bugbee	Nay
Burkhardt	Nay
Cain	Nay
Campbell	Nay
Cate	Nay
Champoux	Absent
Choate	Aye
Conover	Absent
Cross	Nay
Dahood	Absent
Davis	Aye
Delaney	Aye
Driscoll	Nay
Drum	Nay
Eck	Nay

Erdmann	Aye
Eskildsen	Aye
Etchart	Aye
Felt	Absent
Foster	Nay
Furlong	Nay
Garlington	Nay
Gysler	Aye
Habedank	Aye
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Nay
Harlow	Nay
Harper	Nay
Harrington	Absent
Heliker	Nay
Holland	Excused
Jacobsen	Nay
James	Nay
Johnson	Aye
Joyce	Aye
Kamhoot	Aye
Kelleher	Absent
Leuthold	Aye
Loendorf	Nay
Lorello	Aye
Mahoney	Aye
Mansfield	Aye
Martin	Nay
McCarvel	Nay
McDonough	Nay
McKeon	Nay
McNeil	Nay
Melvin	Nay
Monroe	Nay
Murray	Absent
Noble	Nay
Nutting	Aye
Payne	Excused
Pemberton	Aye
Rebal	Aye
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	Nay
Rygg	Nay
Scanlin	Nay
Schiltz	Absent
Siderius	Nay
Simon	Aye
Skari	Aye
Sparks	Nay
Speer	Nay
Studer	Aye
Sullivan	Nay
Swanberg	Absent
Toole	Absent
Van Buskirk	Nay
Vermillion	Aye
Wagner	Aye
Ward	Absent
Warden	Absent
Wilson	Aye
Woodmansey	Nay
Mr. Chairman	Nay

CLERK SMITH: Mr. Chairman, 34 voting Aye, 49 voting No.

CHAIRMAN GRAYBILL: 49 having voted No and 34 having voted Aye, the motion fails. We are now back on Section 3 as the Revenue and Finance Committee proposed it. Are there any further amendments? (No response) Very well, members of the committee, you have before you, on the motion of Mr. Rygg that when this committee does rise and report, after having had under consideration Section 3 of the Revenue and Finance Article, that the same be recommended as adopted. All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and so ordered. Will the clerk please read Section 4.

CLERK SMITH: "Section 4. Equal valuation. The assessed valuation of property to be taxed in any taxing jurisdiction shall be the same valuation as the valuation for state and county purposes." Section 4, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I move that when this committee does arise and report, after having had under consideration Section 4 of Proposal Number 7, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: The language and intent of this section is very similar to that of the present Section 6, Article XII, of the existing Constitution. This is an administrative section which prevents local governments from varying assessment levels to evade statutory mill levy limitations. States which allow taxing jurisdictions to set their own assessed value find that system to be unduly cumbersome. Texas residents, for example, will often receive three or more tax bills, each showing a tax—separate valuation of their property for state, county, city, school district and special district purposes. It is much more efficient to require that the property base be the same for all governmental levels and allow revenue to be adjusted by the mill levies. We do not feel that this is any departure from what we already have; we feel it is still necessary and we ask that you allow it to remain in our proposed Constitution. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there discussion? (No response) Very well, members of the committee, you have before you for your consideration, on the motion of Mr. Rygg that when this committee does arise and report, after having had under consideration Section 4 of the Revenue and Finance Proposal, that it recommend the same be adopted.
Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, will Mr. Rygg yield to a question?

CHAIRMAN GRAYBILL: Mr. Rygg?

DELEGATE RYGG: I'll try.

DELEGATE ARONOW: Mr. Rygg, your comments under this are—refer to Section 6 of Article XII; and looking at it, that section deals with the release or discharge of taxes, while Section 5 refers to the same valuation.

DELEGATE RYGG: You are correct. It is a typing error.

DELEGATE ARONOW: Okay.

DELEGATE RYGG: I'm sorry.

CHAIRMAN GRAYBILL: The error is in the explanation, right, and not in the text.

DELEGATE RYGG: Right.

CHAIRMAN GRAYBILL: All right. Members of the committee, you have before you Section 4, as I just stated. So many as shall be in favor of adopting Section 4, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Will the clerk please read Section 5.

CLERK SMITH: "Section 5. Property tax exemptions. The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, and public libraries may be exempt from taxation, but any private interest in such property may be taxed separately. Property used exclusively for educational purposes, places for actual religious worship, hospitals and places of burial not used or held for private or corporate profit, institutions of purely public charity may be exempt from taxation. Certain classes of property may be exempt from taxation. The Legislative Assembly may authorize creation of special improvement districts for capital improvements and the maintenance of capital improvements and the assessment of charges therefor, against tax exempt property directly benefited thereby." Section 5, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Section 5 of Proposal Number 7, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: We have made a few changes in this section from the one that's presently in use. First, in line 23 on page 19, at the end of the sentence, you will see that we have used the word "may" instead of the word "shall". Now, we realize it's hard to believe that the federal government would ever make any concession as to what may be taxed, but just in the event that such a thing should happen, we thought we would be ready and change it from "shall" to "may". In the meantime, it isn't going to make any difference, because it's going to be controlled by federal action. We did delete some of the present exemptions. We took out agricultural and horticultural societies and mortgages. We couldn't really find out what agricultural and horticultural societies pertained to anymore, although the way this section is written, the Legislature could establish these again as exemptions if they—if it became necessary. We did add a few words that we thought might close up a loophole that presently exists; we provide that private interests in government-owned properties can now be taxed, things like right-of-ways and things like that, that are on federally owned lands. And we have spelled out the fact that special improvement district charges can now be made against tax-exempt properties. In most cases these charges are being now—are being paid, but there seemed to be a question of the legality, and we thought it best to spell it out. Along with that, we have further provided that charges can also be made for the maintenance of these original capital investments that are made in the SIDs. There has been a question of whether chip-coating was part of an improvement, things like that, so we allowed for the maintenance on it, too. We further allowed that the Legislature could have the freedom of adding certain other classes to this list in case the need should arise for this in the future. Now, our proposal doesn't require any taxation of all property, so we didn't feel it was necessary to make a further list of exemptions. In fact, we thought it might be detrimental to make these lists, as once you establish a list, that seems to be what they go by and it's hard to add them on from there. So the majority did feel that this section would be better this way in the new Constitution than is the minority report. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Artz.

DELEGATE ARTZ: Mr. Chairman, I would like to move, as a substitute motion, that Minority Proposal Number 1 on page 32 be adopted. Before I ask the clerk to read it, we overlooked four words that we'd like to put on line 17 after the word "dwellings". The words are "all or in part", and that has been sent out. Would the clerk please read ours.

CHAIRMAN GRAYBILL: Would you tell us what line that is?

DELEGATE ARTZ: Line 17.

CHAIRMAN GRAYBILL: "—dwellings all or in part used"?

DELEGATE ARTZ: Right.

CHAIRMAN GRAYBILL: Let's straighten this out for the record, Mr. Clerk. All in favor of letting the minority add the words "all or in part" in line 17, after the word "dwellings", say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered. Very well, will the clerk please read the minority report on page 32.

CLERK SMITH: "The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, and public libraries may be exempt from taxation, but any private interest in such property may be taxed separately. Property used exclusively for educational purposes, places for actual religious worship, hospitals and places of burial not used or held for private or corporate profit, institutions of purely public charity, household goods and furniture, wearing apparel and other personal property used by the owner for personal and domestic purposes, cash and accounts receivable, dwellings and personal property of totally service-connected disabled veterans, dwellings all or in part used for residential purposes, evidence of debt secured by mortgages of record upon real or personal property in the State of Montana, the stocks of any company or corporation when the property of such company or corporation represented by such stocks is within the state and has been taxed may be exempt from taxation. The Legislative Assembly may authorize creation of special improvement districts for capital improvements, maintenance of capital improvements and the assessment of charges therefor, against tax-exempt property directly benefited thereby."

CHAIRMAN GRAYBILL: Mr. Artz.

DELEGATE ARTZ: Mr. Chairman, when we were going through the Judicial Article, there was a Latin phrase there that I think expresses the intent of the minority committee, which differs from that of the majority. If you will pardon my pronunciation, something like this: "expressio unis exclusio ulternius", which means the expression of one is the exclusion of others. The minority report is in complete disagreement with all references in the rationale of the majority report stating that all property may be exempted from tax by the Legislature. We have faith in the legislative process but are of the opinion that this is opening the door too wide. In our opinion, as upheld by court decisions, only the items of property listed above are eligible to tax exemption by the legislative process. We are especially worried about the one clause in the majority report that says certain classes of property may be exempt from taxation. You all got a letter from the Montana State AFL-CIO, which backs our proposal on Section 5. We agree that in the past it has been easier to enforce collection of taxes on some property than it is on other property but cannot consider this as a sufficient reason for removal of this type of property from the tax rolls. We maintain that in the future it will be easier to collect property taxes on all property because the function has been transferred from the county level to the state level. The Internal Revenue Service has developed procedures for ferreting out income from cash transactions. We maintain that Montana should be able to find as good qualified people as the Internal Revenue Service can. We know that they have an excellent IBM machine downstairs, over in the Mitchell Building; and we feel that [with] proper utilization of this and other sources, it should be—not be too much of a problem in the future. Our main thought is this, tax equity requires that if certain income-producing property is taxed, then all income property should be taxed. We can see no equity to tax $10,000 worth of equipment or other income-producing property which also has income taxes levied and at the same time give the Legislature the right to eliminate $10,000 of investments, say, tax-exempt securities, the income tax of which is not even subject to income taxes. We also submit that if we leave it open to the Legislature, that they are going to have the same pressures brought on us—brought on them that were brought on us: that you can't find these stocks and bonds; therefore, they should not be taxed. We maintain that [if] that is allowed to happen, a severe injustice will be imposed on lower-income citizens who do not have tax-exempted bonds, and this will accrue, of course, to the benefit of our more-affluent citizens. We cannot imagine that the delegates of this Convention will condone such an inequity. Now, to arrive at this, we admit that we had them make quite a long list. We justify the addition of the following items to the permissive list: household goods and furniture, wearing apparel and other personal property used by the owner for personal and domestic purposes. This was recommended by Delegate Felt. Testimony received indicated that costs of collections are in many instances equal to the tax received. The property does not produce income and, as Mr. Aasheim said this morning, sometimes you feel kind of guilty when you sign the thing because it isn't being figured out correctly. Cash and accounts receivable: they are very fluid items; they do not produce income—and also they were recommended by Delegate Felt. We realize that the term "accounts receivable" is a very broad one, but we are sure that the Legislator—Legislature, in its ultimate wisdom, will be able to clarify exactly which ones that do not produce income could be exempted from taxation. Dwelling and personal property of totally service-connected disabled veterans: we had testimony stating that there are 99,000 veterans, of which approximately only 387 would be eligible for this tax relief. We've—submit this tax exemption is certainly justified when the mental picture of what total disability is is considered. Dwellings all or in part used for residential purposes: dwellings do not produce income. We realize that if you was to eliminate dwellings all at once, it would create a severe hardship upon local government. That's why we put "all—in part" in. We've also put that in so that certain people that are now exempted—such as older people, limited income—a portion of their residence could be exempted from tax. It was a necessity, then, that we had to put in "evidences of debt secured by mortgages of record upon real or personal property in the State of Montana". If we did not do that, we would have double taxation, which we also feel is inequitable. The second—last one, Number 6, "The stocks of any company or corporation when the property of such company or corporation represented by such stocks is within the state and has been taxed"—again, it was necessary to eliminate double taxation. That's all I have to say, and I suggest that the delegates approve our substitute motion. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Mr. Chairman, I rise in support of the minority proposal. The primary reason why I sided with the minority in this section was the language of the majority proposal that certain classes of property may be exempt from taxation. It was the feeling of the minority that this language was too broad and gave too much power to the Legislature. It was also our feeling, Mr. Chairman, that that—that this language would open the door to the pressure of special-interest groups and might in the future cause to arise the situation where a large portion of our tax base might be deducted from the tax rolls. So, because of that section, we in the minority got together and tried to foresee and project what the most feasible exemptions might be. As Mr. Artz discussed, we submit the possibility of excluding household goods and furniture. As we all know, taxation on household goods and furniture is a sham presently. We heard testimony from a Commissioner from Cascade County who told us that if you went by the tax rolls in Cascade County, you would be led to believe there are three color TV sets in the county. This indicates to me that it is impossible to profitably tax household goods and furniture. Mr. Artz has discussed other exemptions that we have included in our minority proposal. Possibly the most startling exemption is that of residential dwellings. It was our feeling that sometime in the future, perhaps not the near future, this state might be able to afford the homestead exemption. We heard testimony from a representative from Missoula County, Mr. Watts, who testified on the homestead exemption and his plan. It was a good plan. We weren't able to study it sufficiently to determine if it was workable, but we do feel, because residential property is not income-producing property, that in the future, when Montana develops a greater tax base and more tax opportunities, we might perhaps exempt the residential dwelling. We also included as an exemption the veterans 100 percent disabled. We felt this was very important. These people had injured themselves sufficiently to be 100 percent disabled for the country, and as a result we felt that it was perhaps the duty of the state to exempt them from the tax rolls. Mr. Artz talked about cash and accounts receivable, but the most important thing, again, is the statements of the majority allowing the Legislature to perhaps exempt certain classes of property. And as I said, we felt this gave the Legislature too much latitude and opened them up to too much pressure, so we have tried to include in our minority proposal those possible groups which might be excluded. Thank you very much, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, is there other discussion?
Mr. Davis.

DELEGATE DAVIS: Would Mr. Berthelson answer a question, please?

CHAIRMAN GRAYBILL: Mr. Berthelson?

DELEGATE BERTHELSON: Mr. President, I yield.

DELEGATE DAVIS: Mr. Berthelson, under the present system of taxation, are bank stocks taxed separately? Is there a system of taxation of bank stock?

DELEGATE BERTHELSON: Yes, bank stocks are taxed, Mr. Davis.

DELEGATE DAVIS: The minority proposal, then, would eliminate a tax that is presently being paid by the banking—

DELEGATE BERTHELSON: No, I don't read it that way, Mr. Davis.

DELEGATE DAVIS: —where it says "the stocks of any company or corporation when the property of such company or corporation represented by such stock is within the state and has been taxed may be exempt from taxation". If the building were taxed, then, would the stock not be taxed?

DELEGATE BERTHELSON: Mr. Davis. I don't wish to speak against the minority proposal at all, Mr. Davis, but I can see what you're getting at. Possibly you could misconstrue that to mean that a bank incorporated in Montana—the stocks might be exempt from taxation.

DELEGATE DAVIS: Well, could you possibly construe it any other way? If you're a corporation within the state, have all your stock in the state—or it doesn't even say "all".

DELEGATE BERTHELSON: Mr. Davis, I'll say, "No, you couldn't possibly."

DELEGATE DAVIS: Thank you.

DELEGATE BERTHELSON: Sure.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Mr. President, I would like to resist the motion of the minority and give a few viewpoints as to what the majority meant by their present Section 5. Now, the state has the right to levy property taxes, income taxes and excise taxes—all types of taxes—to support both local and state government. Now, what we want to do here is to give them a free hand as to how these taxes are to be levied, in order to be the most just—and we'll get back to those words again—"just and equitable". They should have this right. There's some property or some income you can't touch other than by an income tax. There's some property that is property that don't produce income and probably should not pay a tax, and we've said they don't have to tax it. Now, we would like to give the Legislature to be able to tax property as a property tax by another tax method. Now, let's get back to money and credits, stocks and bonds. I don't know how much of that is in the State of Montana and how much is owned by all the people of the State of Montana in that category, but we all know we can't tax it in a very efficient manner because you can't report it. Your investigative procedures would take long; you'd be—your County Assessor would be spending a lot of his time issuing subpoenas for itemizations of that. Now, wouldn't it be better, going along with what Bill Artz said, to exempt that property from taxation and levy a special income tax on interest income to make up for that property tax that you can't levy against that type of property? And that's the flexibility that the majority is talking about by allowing the Legislature to exempt certain portions of property. You have another problem on business inventories. Now, everybody knows that everybody lies on business inventories and they can't tax them and they can't really get a fair report. But it's very possible that the Legislature might figure out a way—and we of the committee, the majority of the committee don't know how they'll do it—but they'll probably be able to figure out a way in the next 10, 20 years to levy a gross proceeds tax on business inventories and be able to enforce it. They'd have to put some adjustments in it, because gross proceeds—grocery stores certainly have much more proceeds than—and much more of a turnover than a hardware store, but it's something for the Legislature to figure out, and that's why we would like to take the fact that you must tax all property out of this Constitution and let the Legislature work this out. Now, when you start itemization—itemizing what is exempt from taxation, then you get in trouble again. Now, for instance, in the minority report they talk about cash and accounts receivables. Now, to some people, accounts receivables are quite an income-making thing. All you have to do is look at your Bank of America card, your Master Charge, Your J. C. Penney card, or a conditional sales contract, which can all be carried on the books as accounts receivable but which can make 12 or 13 percent interest on it. So that's why something like that should be left to allow the Legislature to tax that type of property in some other method besides a property tax. Also, when we talk about cash and so forth and so on, we're talking about—a lot of farmers actually have grain in the granary and they treat it as cash. All they have to do is take a telephone call and they've got the cash for it. Well, if the—if they exempt stocks and bonds, there's no reason why the Legislature shouldn't exempt this grain in the granary and be able to figure out another way to get at that property if and when it's sold, and pay the taxes. Now, actually, we have an exemption law in Montana now, the classification law, and which the Legislature will still be allowed to do—classify certain properties as to even their cash value and even after the State Board of Equalization has put different values on it, and they've got some things down in the one percent bracket. Well, the 99 percent of that tax is then exempt under the classification law. Well, why don't we go all the way? Allow the Legislature to exempt certain classes of property and be able for them to get the flexibility to tax them a different way, and thereby make the whole tax process of all three or four types of taxes and see if they can equalize the whole structure.

CHAIRMAN GRAYBILL: Is there other discussion? (No response) If not, the question is on Mr. Artz' substitute motion. The substitute motion is to substitute for Section 5 in the majority report the language on page 32, which is the minority report, covering lines 6 to 28 thereof and setting up a different system for property tax exemption.

Mr. Artz, do you want to close?

DELEGATE ARTZ: I do. Mr. Chairman, Mr. McDonough was called the "brain trust of the committee" this morning, but I think his reasoning was a little bit faulty there in one spot. He said that it's too difficult to tax the stocks and bonds because you can't find them. Then he turned right around and he says, "We'll substitute an income tax instead." I maintain that if you can figure out what the income is on those stocks and bonds, it's just as easy to determine that the stocks and bonds do exist. We maintain in the accounts receivable that possibly the word is a little bit broad, and there's certainly no intention that any accounts receivable, such as mentioned, that are earning income will be exempt from taxation. We have clearly spelled that out in our rationale, and we think that would be sufficient instruction to the legislative body to be sure that does not happen. Thank you very much, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, do you want a roll call vote? No. All right, so many as shall be in favor of Mr. Artz' substitute motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it, and so ordered. Therefore the issue is still on Section 5, as proposed by the majority on page 11. Mrs. Erdmann.

DELEGATE ERDMANN: Mr. President, would Delegate Rygg yield to a question?

CHAIRMAN GRAYBILL: Mr. Rygg?

DELEGATE RYGG: I'll try, Mr. Chairman.

DELEGATE ERDMANN: In line with your very laudable effort to remove all unnecessary language from the current Constitution, I'm curious to know why you have continued to insert, on line 19, the words "and public libraries". Can you conceive, Mr. Rygg, of a public library that would neither be the property of the United States, the state, the county or the city? Thank you, Mr. Chairman.

DELEGATE RYGG: No, I don't believe so. I think it was in the language of the present Constitution and we just left it in there. Would you like to have it removed?

DELEGATE ERDMANN: (Inaudible)

DELEGATE RYGG: Well, I don't—It's up to you, I guess, if you want to make that amendment. I don't think it makes that much difference to me.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Will Mr. Rygg yield to another question?

CHAIRMAN GRAYBILL: Mr. Rygg?

DELEGATE RYGG: (Inaudible)

DELEGATE HARPER: This may not be a large issue. I—Mr. Artz said that the committee heard testimony from totally disabled veterans groups and so they included this one kind of exemption in their listing, and I notice that the majority report does not. Is there any thinking on that?

DELEGATE RYGG: We—Mr. Chairman.

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE RYGG: We did have considerable testimony on this. We certainly didn't want to take anything away from the totally disabled veteran, and it was, I suppose, with some reluctance at least that some of us did not include it. However, we found that we did have a problem of total disability. We found out that perhaps on March 1st a person could be totally disabled and he could go to the doctor the next day and he'd only be 60 percent disabled. So our problem was largely with the fact of when are you totally disabled. And I think—our other thought was there could be totally disabled veterans who might have considerable money, but I believe they changed that in the minority report. But this was our main problem—was when are you a hundred percent totally disabled—and apparently the Veterans Administration admits that you can go from 60 to a hundred with an examination. And that, I think, was the main reason we omitted it.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: May I answer Delegate Harper's question also? I think another thing in the committee that became apparent to us was that there are perhaps 387 totally disabled veterans in the state, but there are quite a large number of maybe 90 percent, and there are a bunch of 80 percent, there are another number of 70 percent and 60 percent; and the veterans organizations themselves seem to feel that this is a statutory matter. They are going to the Legislature and try to allow the Legislature to give them some relief in this area, and I think the consensus of our committee was that it is a statutory matter and should be left in their hands.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. President, would Delegate McDonough yield to a question?

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE FOSTER: Mr. McDonough, on page 11, line—starting, line 21: "Property used exclusively for educational purposes, places for actual religious worship, hospitals and places of burial not used or held for private or corporate profit, institutions of purely public charity may be exempt from taxation". Now, as a lawyer, is it your interpretation that this would mean that the

Legislature could, in fact, tax these properties by a simple majority vote of the Legislature?

DELEGATE McDONOUGH: Yes, they could. That's already under the present Constitution. We just didn't change it.

DELEGATE FOSTER: Thank you, Mr. McDonough. Mr. Chairman and fellow delegates, I merely draw your attention to this because I think it is important to note that we are, in fact, giving the Legislature essentially full powers of taxation, and I submit that this is well and good because, in fact, the Legislature is the proper place for taxation. It is the proper body to handle this problem, and I support the committee fully in this. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, members of the committee, you have before you for your consideration, on the motion of Chairman Rygg that when this committee does arise and report, after having had under consideration Section 5, that the same recommend—that we recommend that the same be adopted.

Mr. Mahoney, did you wish to speak?

DELEGATE MAHONEY: Yes, I'd like to ask a couple of questions, Mr. President, of Mr. McDonough.

DELEGATE McDONOUGH: Yes, sir.

DELEGATE MAHONEY: Mr. McDonough, I'm down here where you say "Certain classes of property may be exempt from taxation." What do you mean?

DELEGATE McDONOUGH: We mean that the Legislature may by law define and exempt certain classes of property.

DELEGATE MAHONEY: Mr. President, another question.

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE MAHONEY: Would this—could it be possible for the Legislature to exempt, then, all dwellings?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE MAHONEY: Wouldn't that be—Another question, Mr. President?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE MAHONEY: I have a series of them.

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE MAHONEY: What would that do to the city?

DELEGATE McDONOUGH: That would be the Legislature's problem. They'd certainly have to think of a way to replace that taxation that they deprive from the cities. I don't think they would. I think they—if—they wouldn't do it unless they had an adequate substitute for it.

DELEGATE MAHONEY: Now—but you wouldn't—then they—but they could also go out and then relieve all property taxes of, like farmlands and that, could they?

DELEGATE McDONOUGH: Yes, they could, but they'd have to find a replacement for it.

DELEGATE MAHONEY: Why would they have to find a replacement?

DELEGATE McDONOUGH: They wouldn't have to. If they didn't want to raise the taxes that year, they wouldn't have to.

DELEGATE MAHONEY: I think that you're running into very dangerous field when you're letting them exempt classes of property. I think you'd better—did you give this serious consideration? (Laughter) Now, what was your—this hearing—

DELEGATE McDONOUGH: Yes, like I said before, the Legislature has for 90 years exempted certain classes of property, partially or practically wholly. We're not really doing very much different from what they've had for the last 90 years. By the Classification Act they have exempted certain partial parts of property.

DELEGATE MAHONEY: Didn't they keep one percent?

DELEGATE McDONOUGH: Yes, one percent they kept.

DELEGATE MAHONEY: The Classification Act is statutory and not constitutional, isn't that correct?

DELEGATE McDONOUGH: That's correct. What we're doing is allowing them to do constitutionally what they've been practically doing for years statutorily.

DELEGATE MAHONEY: Mr. President.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: I think this is very dangerous—to allow them to loose—to go out and exempt certain property of taxation—classes. I'm wondering then if they couldn't go out and say, "We'll exempt the Anaconda Company." Couldn't we go out and say we will exempt all public utilities in the State of Montana? These are the things that I'm starting to wonder that might happen in this state if we get into one session of the Legislature, and I just question whether we want in the Constitution to allow the Legislature to determine and exempt certain classes of property. That's all I'm trying to say on this.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Will Mr. McDonough yield to another question?

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE AASHEIM: I'm also concerned about this same sentence. Did you have any particular property that you had in mind that you want to exempt in this particular category?

DELEGATE McDONOUGH: No. I might say, though, that this wording or the same effect of it—and I hate to bring it up—is contained in the North Dakota Constitution. (Laughter) But we didn't notice that until we got the completed form, which was after this thing was even printed, but I did notice that the other day when we got it.

DELEGATE AASHEIM: Thank you, Mr. McDonough. Mr. President and members of the assembly, I am just as much concerned about this as Mr. Mahoney. I think this is a very treacherous piece of—well, a very treacherous idea to leave in the Constitution. Just imagine—you folks that are going to run for the Legislature. Now, suppose you're in the Legislature next winter and somebody comes up here and says, "Let's exempt this—these household goods. Let's exempt—oh, let's exempt some farmland." And somebody starts dickering and wanting to trade votes. This happens, you know, once in awhile. Can't you foresee that we're in trouble—somebody might be in trouble—exempting certain classes of property? We know very well that household goods should not be taxed, because we know a lot of them are not taxed, and maybe they should be exempt. I'd be all for that. But to exempt any other classes, I would hesitate to do that because I can see the grave dangers within these legislative halls of trading, trading votes; and it does happen. You've heard of it, and there is a danger here. And I'm tempted to put in here, after the word "taxation" on line 25—and I'm going to move this, and I know it's going to create a tempest—on page 11, line 25—but I think it should be ironed out.

CHAIRMAN GRAYBILL: Very well, Mr. Aasheim, just tell us your amendment; don't give us a commercial here. (Laughter)

DELEGATE AASHEIM: After the word "taxation, exempt personal property" and strike "exempt personal property".

CHAIRMAN GRAYBILL: What line are you on?

DELEGATE AASHEIM: Line 25, page 11—and then strike "Certain classes of property may be exempt from taxation".

CHAIRMAN GRAYBILL: Now, the Chair understands you to have stricken the sentence that says, "Certain classes of property may be exempt from taxation".

DELEGATE AASHEIM: Yes.

CHAIRMAN GRAYBILL: Have you done more than strike the sentence?

DELEGATE AASHEIM: That's all, and after the word "taxation", on line 25, "exempt personal property". Now, you may argue, well, what is personal—

CHAIRMAN GRAYBILL: Just a moment, Mr. Aasheim, I don't understand. You wanted to say "may be exempt from taxation—exempt personal property"? I don't understand. Line 25, I've taken out the sentence "Certain classes of property may be exempt from taxation". What's the rest of your amendment?

DELEGATE AASHEIM: "—which personal property will be exempt"—let's put it that way—and strike the other sentence. Now—

CHAIRMAN GRAYBILL: Mr. Aasheim, I don't understand you.

DELEGATE AASHEIM: Well—

CHAIRMAN GRAYBILL: So far, the Chair has taken out the sentence that appears on line 25 and 26, "Certain classes of property may be exempt from taxation." Is there more to your amendment than that?

DELEGATE AASHEIM: Let's—after that word "taxation", strike the words that I said, "except personal property". Let's strike "Certain classes of property may be exempt from taxation". And I'd like to hear this discussed further because I think this is a dangerous, dangerous sentence, as Mr. Mahoney has said.

CHAIRMAN GRAYBILL: Very well, the sense of the Chair is—the Chair will then rule that your amendment to Section 5 is to strike the sentence "Certain classes of property may be exempted from taxation period".

DELEGATE AASHEIM: That's right.

CHAIRMAN GRAYBILL: Very well.

DELEGATE AASHEIM: And I won't belabor this any farther, because I think if we find that if we need to exempt certain classes of property, that as time goes on we can then go ahead and amend the Constitution. But I don't believe that we should have this influence, this terrific pressure that's going to be on the legislative body, to have this particular feature in it.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Mr. Chairman, I'd just like to tell Mr. Mahoney and Mr. Aasheim that I feel their fears are meaningless. At present, the Legislature can reduce to, say, 1 percent or ½ of 1 percent in any class of property they want, which is, in effect, erasing the tax from one class of property. And we can't prevent them from doing it, so what Mr. Aasheim does is really a meaningless act.

CHAIRMAN GRAYBILL: Is there other discussion of Mr. Aasheim's amendment?
Mrs. Bates.

DELEGATE BATES: Mr. Chairman, I wonder if someone were to answer—perhaps Mr. McDonough would yield to a question.

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Yes, ma'am.

DELEGATE BATES: Mr. McDonough, in this exemption that you're speaking of here, I understand under our present Constitution and our legislative body, we are now giving a relief from certain taxation that—for new businesses and industry. Is this right?

DELEGATE McDONOUGH: Yes, ma'am.

DELEGATE BATES: And is this what you're referring to in this?

DELEGATE McDONOUGH: No, we're not restricting it to that. We say the Legislature can, in some way. They are now giving them tax breaks of approximately—I think they were taxing them at 7 percent, which is quite a tax exemption in and by itself. What we're doing here is just enlarging that a little bit so if the Legislature doesn't want to tax it at all for various reasons—efficiency, cost—and if—they don't have to, and that's all we're doing here. We're not really—I don't think—in practicality and the working of the assessment schedule, we're really not changing it that much.

DELEGATE BATES: Mr. Chairman, would Mr. McDonough yield to another question?

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Yes, ma'am.

DELEGATE BATES: Mr. McDonough, then it isn't actual classes, or it could be comparative type of industry that may be relieved of some of their tax burden—is this possible under this amendment—and be in competition with local businesses?

DELEGATE McDONOUGH: If it can be classified, it would, yes.

DELEGATE BATES: Okay, thank you.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: May I ask Mr. McDonough a question?

DELEGATE McDONOUGH: (Inaudible)

DELEGATE HARPER: If it's true that having this sentence in there—"Certain classes of property may be exempt from taxation"—does not really change the picture, would—am I right in thinking that if the sentence were not in there, it also would not change the picture very much? In other words, is the sentence worth fighting over?

DELEGATE McDONOUGH: Yes, it is. I think it is. Actually, now, the Assessor must by law—sometimes they don't—must list all property on the assessment rolls. By leaving this out, and the Legislature so desires, he doesn't have to list the personal property. The Legislature might—I mean household goods and furnishings. The Legislature might, if they decide to tax or keep taxing that thing, they might find another more practical way of taxing furniture and personal property than the listing schedule and the assessment method they do now where they have to either make the personal calls or call them on the telephone or go over and actually look at the house. It's—I think it's important enough to be in there, and I think it's—it just assists the Legislature in performing its duties and the county officials to do their duty and do it properly, where we don't go through the actual sham of the Classification Act.

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, if it's in order, I would like to amend Mr. Aasheim's amendment, whereby on line 25, strike the words "Certain classes of" and insert in lieu thereof "Personal", so that sentence would then read: "Personal property may be exempt from taxation."

CHAIRMAN GRAYBILL: Now, you're making an amendment to Mr. Aasheim's amendment?

DELEGATE CHOATE: Right.

CHAIRMAN GRAYBILL: All right, Section 5. Very well, Mr. Choate has amended Mr. Aasheim's amendment. I think I'm going to call that a substitute amendment, since Mr. Aasheim took his—took it out and you can't amend it if it's out. So I'm going to call it a substitute amendment, which puts—has the effect of putting back in this sentence: "Personal property may be exempt from taxation." Is that correct? But it has the effect of leaving out the words "Certain classes of". So that we're now debating Mr. Choate's substitute motion—substitute amendment—substitute motion, which is: "Personal property may be exempt from taxation", on line 25 and 26.

Mr. Davis.

DELEGATE DAVIS: Mr. President, I would amend the substitute motion to add the words "Certain classes of."

CHAIRMAN GRAYBILL: Very well, Mr. Davis'—now we are full up, for everybody's information. Mr. Davis' amendment has the effect of adding the words "Certain classes of" back in, so it now becomes: "Certain classes of personal property may be exempt from taxation", and the effect of the amendment now is to add the word "personal" before "property".

Mr. Davis, do you want to discuss that?

DELEGATE DAVIS: Just briefly. I support the majority, but if we are going to have amendment, I don't think you should give the Legislature authority to just either exempt or not exempt personal property. I think the definition of that is being misunderstood here. That covers a wide spectrum. If it's the will of this Convention to limit this, then I think it should be "classes of personal property be exempt", rather than "all".

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, the present Constitution attempts to place a tax upon practically everything, with a few exemptions. The proposal here is to exempt everything except in a few items. All the trouble in taxation, excepting paying the taxes, is in the field of exemptions. And the fewer exemptions we can have, such as a variation in the percentages of values—which we have now on our property tax—such as the depletion allowances in the federal oil situation and things like that. Every time you exempt anything, you throw everything else out of kilter and give somebody a special privilege, so I think that the fewer exemptions we have, the better off we are. And in the majority article here, offering—the exemptions are fairly well cut to a minimum. They are mainly governmental or religious or educational, and they are beyond—the profit motive is not involved. So I think that they're restricted about as much as you can get them, but if you start adding other exemptions, you are going to get into difficulties and it's going to throw a terrific burden upon the next Legislature; but we've been throwing terrific burdens upon the next Legislature throughout this Convention and will probably be doing it for the next two weeks, so I don't see any reason why we shouldn't do it in this case.

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman, would Mr. McDonough yield to a question, please?

CHAIRMAN GRAYBILL: Mr. McDonough, will you yield?

DELEGATE McDONOUGH: (Inaudible)

DELEGATE NUTTING: Is there any place in this article that it says that all tax—that all property must be taxed?

DELEGATE McDONOUGH: No.

DELEGATE NUTTING: Will you yield to another question, please?

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Yes.

DELEGATE NUTTING: Then what is the use of Section 5? Because it just says these may not be taxed, and they don't have to be taxed anyway, so I can't see that the whole article means anything.

DELEGATE McDONOUGH: Well, the present Constitution itemizes the exemptions in the first two sentences. They are listed there because, who owns that property? The state or the federal government owns that property. It might not be a different class of property, but they own it and these religious organizations own it, and you might not be able to fit that into a class that can be exempt by that third sentence. That's why they're not—they're itemized in there; that regardless of the class of property, if they're owned by this charitable or governmental organization, the Legislature may exempt them from taxation; and that's why we itemize. And besides, those organizations want to make sure their status stayed the same as it was for the last 90 years. That's the main reason.

CHAIRMAN GRAYBILL: Very well, the discussion is on Mr. Davis' motion to add in "Certain classes of", so the sentence now reads: "Certain classes of personal property may be exempt from taxation."

Mr. Mahoney.

DELEGATE MAHONEY: Mr. President, would either Mr. McDonough or—I believe Mr. McDonough will be fine—Would you answer a couple of questions, please?

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE MAHONEY: Would you tell me which one of these are—property classifications are down to 1 percent?

DELEGATE McDONOUGH: I think there's something in the last Legislature—I think it was disabled veterans at 1 percent. Mr. Drum is showing you a book there. And free port is down to 1 percent.

DELEGATE MAHONEY: Now, those two don't make up much property, do they?

DELEGATE McDONOUGH: I have no idea. It wouldn't, no. The free port could. There's no reason why free port couldn't.

DELEGATE MAHONEY: Mr. President.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: If you will go and look at the book, and I happen to know—and I didn't realize there was 1 percent, I thought 7 percent was the lowest. I think that old people's homes were cut to 8 percent. There is a thirty-three and a third percent; that is the actual top except for parts of mines, I believe it is. It's mining stocks, that's a hundred percent. If you have mineral rights, that's a hundred percent. Otherwise, from this thirty-three and a third percent is the highest amount that's on there, and that's on livestock. Land is 30 percent, then you drop down to 20, and the low one that I remembered about was wheat at 7 percent and solvent credits are 7 percent. Now, if we're going out here to exempt property, all classes of property could be exempted, and I think that we had better check very closely before we let the Legislature—Pressure comes on—and I've seen it a good many times, too—all of a sudden. I just got a bang out of the distinguished gentleman from over in Sheridan County, Mr. Aasheim. He started to talk personal property, then he stopped. I know why he stopped—cattle, machinery, cars, all of this stuff becomes personal property—and if we take all that out, where are we going? I want to thank you, Mr. Aasheim, for stopping at the personal property thing, because we'd have had very little left but some land and a few buildings under the property tax. Now, I wonder—I know that Montana must open up a different system the next session of the Legislature. Always in the past we've patched. They've been patching for years, looking for the ultimate time to get the sales tax, and last year that went down the drain. Now we must start over, and I would certainly hestitate to let this next session of the Legislature now start to exempt some property. We might wind up with very few paying, and this is where I don't think the 1 percent—the discussion of the 1 percent nor the 5 or 8 or 10 or 30 percent is a lot—reasonable thing in this question. And let's do a lot of thinking before we're going to allow the Legislature to exempt classes of property. That's all I have to say, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, would Mr. Mahoney yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Mahoney?

DELEGATE MAHONEY: I'll try.

DELEGATE REICHERT: I have before me the journals from the last session, and as mentioned by Mr. McDonough, the free port bill, which was House Bill 267, is an act relating to the classification of property for taxation, providing a basis for the imposition of taxes, in effect an exemption; and then I have in the Senate Journal, Senate Bill 36. What I don't understand, if these exemptions are allowed now—if the Legislature can do that—why are we so concerned about this section, this one sentence in Section 5—that certain classes of property may be exempt? Can't they now be exempt by the Legislature?

DELEGATE MAHONEY: Let me state this, that if a free port bill—this is merchandise that stops enroute, and the Legislature actually went in and put a tax on something that most [of] the states have never even taxed because it's free port—just stopped overnight in the State of Montana or in a warehouse. This is what free port merchandise is.

DELEGATE REICHERT: My question is, though, cannot the Legislature now make exemptions?

DELEGATE MAHONEY: I don't know as I want to give them all that power.

DELEGATE REICHERT: But don't they now have it?

DELEGATE MAHONEY: No, they still have to tax at 1 percent. They have to still put it on.

DELEGATE REICHERT: One percent?

DELEGATE MAHONEY: Yes.

DELEGATE REICHERT: Thank you.

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, there's two sides to the coin, apparently, and I see a little more sense to the majority proposal in this one sentence than I read before. When it's been brought up that if we limit this to personal property exemption, then what will we do about the old people that just barely have enough to maintain their home rather than go to a county rest home, or a disabled veteran, because we would remove from this any exemption on real property. And I do think it's a mistake, and I therefore withdraw my motion and leave it up to Mr. Davis to pursue his. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, Mr. Choate's motion is withdrawn, but we're still on Mr. Davis' motion.

DELEGATE DAVIS: Mr. President, my—

CHAIRMAN GRAYBILL: Just a minute. I just want to state it again, Mr. Davis. Mr. Davis' motion has the effect of making the sentence at line 25 read: "Certain classes of personal property may be exempt from taxation." Is there other discussion before he closes?

Oh, Mr. Davis.

DELEGATE DAVIS: I want the tail to go with the hide. I withdraw mine, too. (Laughter)

CHAIRMAN GRAYBILL: Well, it's considered withdrawn, for whatever reason, Mr. Davis. All right, we're back to Mr. Aasheim's motion, which was to strike the line—the sentence: "Certain classes of property may be exempt from taxation"—strike the sentence entirely. Now, is there other discussion before Mr. Aasheim closes? Mr. Choate—or, I mean, Mr. Conover; pardon me.

DELEGATE CONOVER: Mr. Chairman, will Mr. Mahoney yield to a question?

CHAIRMAN GRAYBILL: Mr. Mahoney?

DELEGATE MAHONEY: I'll try.

DELEGATE CONOVER: Charley, if we delete this sentence—"Certain classes of property may be exempt from taxation"—will this give the Legislature the power to exempt our old folks, retired in these homes, that have been taxed beyond their—

DELEGATE MAHONEY: No.

DELEGATE CONOVER: Thank you.

CHAIRMAN GRAYBILL: Mrs. Bowman.

DELEGATE BOWMAN: Mr. Chairman, I wonder if Mr. McDonough would yield to a question, please.

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Yes, ma'am.

DELEGATE BOWMAN: Mr. McDonough, if we deleted this sentence, as Mr. Aasheim would like to do, would that make it impossible for the Legislature to grant an industry, say, a certain amount of tax relief for pollution control or a certain amount of tax relief in an effort to get an industry to come into the state?

DELEGATE McDONOUGH: Well, if it's deleted—

DELEGATE BOWMAN: Yes, that's my question.

DELEGATE McDONOUGH: —then a court might construe this whole section that you still might have to tax all property. Now, if it's left in, under certain rules and regulations that would not violate the 14th Amendment on discrimination and so forth, the Legislature could give such an exemption.

DELEGATE BOWMAN: Thank you.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman, will Mr. McDonough yield?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE JAMES: If we took this out, would it be possible to aid 100 percent disabled veterans, if we deleted this? Could we still do that, or is this necessary to leave in to accomplish this purpose?

DELEGATE McDONOUGH: Well, if they can write the statute that would put that into a class of property—

DELEGATE JAMES: Well, could we write a statute without this in, though?

DELEGATE McDONOUGH: Well, they've done that by bringing it down to 1 percent. Actually, the same thing.

DELEGATE JAMES: Thank you.

DELEGATE McDONOUGH: I might note that, Mr. James, the Constitution—

CHAIRMAN GRAYBILL: Mr. McDonough, you may finish.

DELEGATE McDONOUGH: Oh—

CHAIRMAN GRAYBILL: Go ahead, Mr. McDonough.

DELEGATE McDONOUGH: I'm sorry, Mr. President. I might note that Mr. James showed me the Alaska Constitution, which also has the wording that we're proposing in Section 5, which is: "Other exemptions of"—wait a minute—"Other exemptions of like or different kind may be granted by general law."

CHAIRMAN GRAYBILL: Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President, fellow delegates. Speaking on this and for the majority report, we need a free port in Montana. Even the 1 percent tax prevents us from having other industries in Montana. At a recent industrial development meeting up in Kalispell, we were informed that the port of Seattle, which is a free port, has leased 30,000 square feet of warehouse space in Chicago for the purpose of bringing in packaged goods and different things, repackaging these things and shipping them on. Now, with us being fortunate to have the Amtrack running both south and north part of our state, this could open up an entire new business for us, not only in Whitefish on the rail line, but in Shelby—the whole—across the northern part of our state and also down in Billings and the southern part of the state, in Butte and so on. I think that this is an important thing to leave in the article as it is. Thank you.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: I wonder if Delegate Aasheim would yield to a question.

CHAIRMAN GRAYBILL: Mr. Arbanas—Mr. Aasheim?

DELEGATE AASHEIM: I yield.

DELEGATE ARBANAS: Is it your understanding now that the tax exemptions can go down to 1 percent by law?

DELEGATE AASHEIM: Presently, yes.

DELEGATE ARBANAS: Now, it just occurs to me, and I'd like to have your concurrence or reflection on it, in many cases it seems to me it would cost us more to collect that 1 percent and the taxes would have to be worthwhile, so that we're not really accomplishing anything as far as actual revenue. Would that be possible?

DELEGATE AASHEIM: That's very possible, Mr. Arbanas. May I close?

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I can't really—I wonder that Aasheim and Mahoney are so worried about the Legislature. I really do. As bad as that Legislature—the next one and all those are going to need money; I can't understand how you think they're going to exempt certain classes. I just can't see that. And certainly that's not the intent of this, but if there is something that later on has to be exempted, it's there and we can do it. But as far as exempting large classes of property to reduce the income from Montana, that just seems inconceivable to me. And I know a little bit about pressures and I know that, but I also know the pressure of getting enough money to pay the bills and I think that would come first. And I frankly can't see why that sentence bothers you. I think we need it in there just in case in the future there is something that has to be an exemption, along with some of the others we already have. I think you're overly cautious about that. I don't think you have anything to worry about. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: (Inaudible)

CHAIRMAN GRAYBILL: Oh, wait a minute.

Mr. Toole.

DELEGATE TOOLE: Mr. Chairman, just very briefly, I wonder if the Convention realized the significance of Mrs. Bowman's question and whether or not it was adequately answered. We certainly don't want to put ourselves in a situation where we can't exempt taxation to encourage nonpollution, and if this—Mr. Aasheim's amendment would do that, I'm certainly opposed to it, because we want to encourage tax exemption for nonpolluting industries. And not necessarily exemption—temporary exemption, possibly, while the nonpolluting facilities are being amortized. And I think it's a very significant question Mrs. Bowman asked, and I'm not sure that the Convention realizes the full import of it.

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman, I still didn't get my answer from Mr. McDonough, because as I read the old Constitution, Section 1, Article XII, it says that all property shall be taxed. No place in this new article does it say "all properties shall be taxed", so as far as I'm concerned, whether we take it out, we put it in—we put in Section 5 or we take Section 5 out, it still doesn't make any difference. It leaves it up to the Legislature, so I can't see what we're arguing about on this whole article. It's meaningless.

CHAIRMAN GRAYBILL: Mr. McDonough, you may respond.

DELEGATE McDONOUGH: Yes, I think Mr. Nutting is basically right. But we put it in there to make sure a court couldn't construe it any other way than to make sure that this body knew what we were doing when we wrote this article on this exemption. And he is right, generally.

CHAIRMAN GRAYBILL: Mr. Artz.

DELEGATE ARTZ: Mr. Chairman, I support Mr. Aasheim's motion as a compromise between the minority and the majority reports. Thank you.

CHAIRMAN GRAYBILL: Mr. Aasheim, you may close.

DELEGATE AASHEIM: Mr. Chairman, I was concerned about this, and it wasn't properly aired. And in reply to Mr. Mahoney, yes, I have selfish motives for everything I do—and I challenge you to say otherwise—but my personal property taxes aren't worth arguing over. I'm glad to pay them, but I think that the present system of assessing household goods just smells to high heaven, as I said this morning, and that's why I wonder about taxing them; and I think I had the sense of the committee—the group. I think that we have to give the Legislature a little leeway. So with that, I'm going to withdraw my motion.

CHAIRMAN GRAYBILL: Very well, Mr. Aasheim has now withdrawn his motion and we're back with the committee language. Are there other—

Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman, I haven't had time to write this out, but I move to amend by including after—in—as the first sentence in Section 4 the first sentence of the old Constitution.

CHAIRMAN GRAYBILL: You mean Section 5?

DELEGATE NUTTING: The present Constitution.

CHAIRMAN GRAYBILL: You mean Section 5, I presume.

DELEGATE NUTTING: Section 1. The first sentence of Section 5 would be the first sentence of Section 1 of Article XII—

CHAIRMAN GRAYBILL: Would you read—

DELEGATE NUTTING: —which would read: "The necessary revenues for the support and maintenance of the state shall be provided by the Legislative Assembly, which shall levy a uniform rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, except those specially provided for in this article."

CHAIRMAN GRAYBILL: Mr. Nutting, I have to have that sent to the Chair, please. All right, I have it now. You may want to write this down. If you do, I'll read it carefully. The present Article XII, Section 1, of the present Constitution —Mr. Nutting wants to add the first sentence of that section to Section 5—at the beginning of Section 5 on line 17—so that Section 5 would read: "The necessary revenue for the support and maintenance of the state shall be provided by the Legislative Assembly—comma—which shall levy a uniform rate of assessment and taxation—comma—and shall prescribe such regulations as shall secure a just valuation for taxation of all property—comma—except that specifically provided for in this article period". Once again, now, the amendment would add this sentence: "The necessary revenue for the support and maintenance of the state shall be provided by the Legislative Assembly, which shall levy a uniform rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property—comma—except that specifically provided for in this article." Then continuing on, "The property of the United States", et cetera, as shown on line 17, page 11.

Mr. Nutting, is that the sense of your amendment?

DELEGATE NUTTING: Yes, that's correct. I just think we have nothing here that says all property will be exempt—will be taxed; so what is the purpose of having exemptions to something that you don't have to tax in the first place? And by this it says, "all property"—all property shall be taxed, with the following exemptions. I think that clears that up.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, would Mr. Nutting yield to a question?

CHAIRMAN GRAYBILL: Mr. Nutting?

DELEGATE NUTTING: Yes.

DELEGATE SCANLIN: What's the difference between your amendment and Section 1 of the proposed article?

DELEGATE NUTTING: It says, "Taxes shall be levied by general laws for public purposes." It doesn't say "all" on anything.

DELEGATE SCANLIN: Well, Mr. Chairman—

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: —from my point of view, that would include what Mr. Nutting is trying to say.

CHAIRMAN GRAYBILL: Well, Mr. Scanlin, if this is helpful to you, the Section 1 simply says that all taxes—the taxes levied have to be levied by general laws, but Mr. Nutting's point is that it doesn't say all property has to be taxed.

Mr. Harper.

DELEGATE HARPER: Mr. Nutting has said two or three times now that what he is saying is that nowhere do we say that all property must be taxed. I was just wondering, Dick, when you read all of that, since part of it does conflict in a sense, or is repetitious to some of Sections 1, 2, 3 and 4, why you couldn't just say, "All property shall be taxed except", and then move right on in to Number 5. Then the issue would be clear.

DELEGATE NUTTING: Mr. Harper—

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: I would have no objection if somebody could simplify these words. This is the best thing I could come up with in 30 seconds.

DELEGATE HARPER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: To make the issue clear to us, may I move to amend Mr. Nutting's addition simply by, on line 17, after the words "property tax exemptions", to begin the sentence by saying: "All property shall be taxed except", and then make that a lower case "t" and go right on with the way Section 5 is drawn in the majority proposal.

CHAIRMAN GRAYBILL: Very well, your substitute motion for Mr. Nutting's motion is accepted for debate. Mr. Harper has now made a substitute motion that Section 5 begin by the sentence: "All property shall be taxed except"—and then go on—"the property of the United States, the state, county", and so forth. Is there discussion?

Mr. Davis.

DELEGATE DAVIS: Mr. President, will Mr. McDonough yield to a question?

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: (Inaudible)

DELEGATE DAVIS: Mr. McDonough, in the language that has now been modified a little that Mr. Nutting put in, was in our original Constitution, we thereafter had a constitutional amendment, did we not, to allow us to put on the income tax?

DELEGATE McDONOUGH: Well, as I understand the income tax, the court did say that the income tax was constitutional about the same time they levied it and made the—I mean, about the same time they made the amendment. What I hate—I see Mr. Harper has removed the uniformity clause, which I think should be out of there. I really don't think that this amendment is needed. It's clear like it is. I have the same objection, maybe, to Mr. Nutting's amendment as he had to mine, so I don't think it really clears anything up one way or the other.

DELEGATE DAVIS: Would you yield to another question?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE DAVIS: Does Section 1 give authority to levy this property tax?

DELEGATE McDONOUGH: The state has—the Legislature has the inherent power to tax. It doesn't have to give it to them.

DELEGATE DAVIS: They also have the inherent power for income tax?

DELEGATE McDONOUGH: Yes, they do.

DELEGATE DAVIS: And do they have the inherent power for sales tax?

DELEGATE McDONOUGH: Yes, they do.

DELEGATE DAVIS: Thank you.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I resist the motion. I thought we sort of had that cleared up when we went through our Section 1, where we say, "Taxes shall be levied by general laws for public purposes." I think the real meaning for this is, it just doesn't seem to be in Mr. Nutting's mind the need for the exemptions. However, if we do this, of course, there would have to be a lot of exemptions if you want to go down that way; and I think we're really asking for a lot of trouble if we do that. We'd have a very involved plan, because he apparently didn't want to accept McDonough's reason for having Section 5 and he admits that maybe we don't need it; because we say nothing is taxed, we could go the other way. On the other hand, I think Mr. McDonough's explanation is reasonable that we do set some things, because there have been some court rulings on that, and I think we keep it. I resist the amendment.

CHAIRMAN GRAYBILL: Mr. Anderson.

DELEGATE OSCAR ANDERSON: Would Mr. McDonough yield to a question, please?

CHAIRMAN GRAYBILL: McDonough?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE OSCAR ANDERSON: I have a nonlegal mind, but when you say "Certain classes of property may be exempt from taxation", could anybody interpret that to be otherwise than saying, unless it's specifically exempted by being exempt from taxation, it would cover all classes of property? Is that correct or incorrect?

DELEGATE McDONOUGH: I'm sure when the Legislature draws the revenue measure, they'll certainly say what's taxable under that revenue measure, and they can say it as easy as we can say it here. They can say "All property shall be taxed". I don't think the Legislature will have any problem defining what's to be taxed. Is that what you mean?

DELEGATE OSCAR ANDERSON: (Inaudible)

CHAIRMAN GRAYBILL: Well, that's your answer anyway, whether it's what he means or not. Is there other discussion? (No response) If not, the issue is on Mr. Harper's amendment. Do you feel it necessary to close, Mr. Harper?

DELEGATE HARPER: Except to say that I was simply trying to clarify what I think Dick Nutting is saying and not expressing my own opinion. I think it would be better left out, so I'm going to vote against this suggestion.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Harper's substitute amendment that Section 5 begin with the phrase: "All property shall be taxed except the property of the United States", et cetera. So many as shall be in favor of Mr. Harper's proposal, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: All right, it's defeated. We're now back on Mr. Nutting's proposal, which is to add the first sentence from the old—from the present Constitution, so that it reads: "The necessary revenue for the support and maintenance of the state shall be provided by the Legislative Assembly, which shall levy a uniform rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, except that specifically provided for in this article"—then going on to say "The property of the United States", et cetera. Is there further discussion on that? (No response) Mr. Nutting, do you wish to close?

DELEGATE NUTTING: Mr. Chairman, with friends like George, who needs enemies? (Laughter) I think the overwhelming support I got on the last vote would demonstrate what's happened here. I withdraw my motion. (Laughter)

CHAIRMAN GRAYBILL: Very well, Mr. Nutting has withdrawn his amendment and we're back to Section 5 without amendments. Is there further discussion? (No response) If not, members of the committee, you have before you for your consideration, upon the motion of Mr. Rygg, Chairman of the Revenue and Finance Committee, that when this committee does arise and report, after having had under consideration Section 5 of the Revenue and Finance Article, that we recommend the same be adopted.

DELEGATE KAMHOOT: Roll call vote.

CHAIRMAN GRAYBILL: There's a roll call vote called for. So many as shall be in favor of that motion, please vote Aye on the voting machines; and so many as shall be opposed, vote No. Have all the delegates voted?
(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?
(No response)

CHAIRMAN GRAYBILL: Please take the ballot.

Aasheim	Aye
Anderson, J.	Aye
Anderson, O.	Aye
Arbanas	Aye
Arness	Excused
Aronow	Nay
Artz	Nay
Ask	Aye
Babcock	Aye
Barnard	Aye
Bates	Aye
Belcher	Aye
Berg	Aye
Berthelson	Aye
Blaylock	Aye
Blend	Aye
Bowman	Aye
Brazier	Aye
Brown	Aye
Bugbee	Aye
Burkhardt	Aye
Cain	Aye
Campbell	Aye
Cate	Aye

Champoux	Aye
Choate	Absent
Conover	Aye
Cross	Aye
Dahood	Absent
Davis	Absent
Delaney	Absent
Driscoll	Aye
Drum	Aye
Eck	Aye
Erdmann	Absent
Eskildsen	Nay
Etchart	Nay
Felt	Absent
Foster	Aye
Furlong	Aye
Garlington	Aye
Gysler	Nay
Habedank	Absent
Hanson, R.S.	Aye
Hanson, R.	Absent
Harbaugh	Aye
Harlow	Aye
Harper	Aye
Harrington	Aye
Heliker	Aye
Holland	Excused
Jacobsen	Aye
James	Aye
Johnson	Aye
Joyce	Aye
Kamhoot	Nay
Kelleher	Absent
Leuthold	Absent
Loendorf	Aye
Lorello	Aye
Mahoney	Nay
Mansfield	Nay
Martin	Aye
McCarvel	Aye
McDonough	Aye
McKeon	Aye
McNeil	Aye
Melvin	Aye
Monroe	Aye
Murray	Absent
Noble	Aye
Nutting	Nay
Payne	Excused
Pemberton	Aye
Rebal	Aye
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Aye
Romney	Aye
Rygg	Aye
Scanlin	Aye
Schiltz	Aye
Siderius	Aye
Simon	Aye
Skari	Aye
Sparks	Aye
Speer	Aye
Studer	Absent
Sullivan	Absent
Swanberg	Aye
Toole	Aye
Van Buskirk	Aye
Vermillion	Aye
Wagner	Aye
Ward	Aye
Warden	Aye
Wilson	Absent
Woodmansey	Aye
Mr. Chairman	Aye

CLERK HANSON: Mr. Chairman, 74 delegates voting Aye, 9 voting No.

CHAIRMAN GRAYBILL: 74 delegates having voted Aye, Section 5 is adopted. Now, before we read Section 6, the Chair would like to call on Fred Martin, who has an introduction to make.

DELEGATE MARTIN: Mr. President, I should like to introduce a good friend, a former boss, a good Governor and Legislator, and an 80-year-old, busy Montanan, "the Galloping Swede", Hugo Aronson.

(Applause)

CHAIRMAN GRAYBILL: Mr. Aronson, we are certainly happy to have you with us here this afternoon, and we appreciate your coming, and we hope you'll see that we're working hard.

(Mr. Aronson spoke briefly to the Convention, congratulating them on their efforts and wishing them success. Since he did not speak into a microphone continuously, his remarks were not sufficiently audible to be transcribed faithfully and accurately.)

CHAIRMAN GRAYBILL: Thank you very much, Governor Aronson, and good afternoon.

Mr. Eskildsen.

DELEGATE ESKILDSEN: If there be no objections, let's recess till 3:45.

CHAIRMAN GRAYBILL: The motion is to recess until 3:45. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: And so ordered.

(Convention recessed at 3:25 p.m.—reconvened at 3:48 p.m.)

CHAIRMAN GRAYBILL: The committee will be in session. The clerk will read Section 6.

CLERK HANSON: "Section 6. Highway earmark. Revenue, except from general sales and use taxes, from excise and license taxation on gasoline, fuel and other energy sources derived as a result of the propulsion of vehicles on public highways, and gross vehicle weight fees, shall be used solely for the payment of obligations incurred for construction, reconstruction, repair, operation, and maintenance of public highways, streets, roads and bridges and the—for county, city and town obligations on streets, roads and bridges, after the deduction of funds for endorsement—enforcement of highway safety, driver education, tourist promotion and for administrative and collection costs as authorized by the Legislative Assembly. By a two—by a three-fifths vote of the members of each house of the Legislative Assembly or by initiated measure approved by a majority of the electorate, such dedicated funds may be appropriated for other purposes." Mr. Chairman, Section 6.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Section 6 of Proposal 7, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: This, of course, is the article which we had probably more testimony on than anything else. The committee did change this from the original 1(b). We changed it in the Revenue by deleting some of the other revenues and leaving just the gas and diesel fuel tax and the gross vehicle weight tax. Roughly, I suppose, we decreased it about two-plus million dollars. Then, going down, we did change it enough to make it definitely legal for the cities and towns to get the 1 cent they have already been getting and use it for county, city and town streets, roads and bridges. Then, we did allow the Highway Patrol to be paid from this fund. Apparently there is a test case we have now, but we did, in our committee, decide that that should come from this money. We did allow for some drivers' education, and we maintained the allowance for tourist promotion that has already been used. Now, probably the biggest change in here was that we—in the last sentence, it does say that by a three-fifths vote—the members of each house, such dedicated funds may be appropriated for other purposes. I don't believe I'm going to read the comments of our rationale. I think you've all read them. I think I will omit giving you exact figures on revenues and expenses at the moment, because I feel we have something bigger than this that we are arguing about. I think maybe there are three factions, should we say, concerning this proposal. First, I think we have those who really don't approve of earmarking in any form for any purpose. In a way, these people are idealists, but they are sincere and we respect their opinion. I have thought they might want to delete this section, but so far I haven't seen an amendment like that on the desk. Then there is the other group who would like to retain the anti-diversion amendment as it presently is in Section 1(b). Now this group probably isn't as idealistic as the first group. They want to make sure they retain what they presently have so they can continue the highway program and other programs that go along with it, and we respect their opinion. It has been rumored that this group wants all or nothing and would attempt to have the new Constitution voted down if they had to make a concession; I refuse to believe this. Then we have the third group, the ones who would want to support our committee proposal, which we think is a practical approach. Some of us on the committee, too, might like to have had no earmarking, but we want Montana to progress, and for that we need highways. We don't want to interrupt the program of being assured of having money available for matching federal funds. We know this is planned several years in advance, and we don't want to upset the applecart. We are willing to make some concessions in order to save our highways and to save our new Constitution. We would like to have these other groups agree to compromise. Now, actually, I have no idea on how things will go on this floor this afternoon. I had thought that perhaps there would be an amendment here to kill our proposal, and if that were the case, I would hope you would override it and leave us still with our proposal. Then, I had probably thought—and there is an amendment which is the original 1(b), so I suppose perhaps that will be first up if the other one isn't forthcoming. And I would hope there, too, that that one would fail. Then I would hope that we would have the opportunity of maybe discussing our own proposal in a little more detail and hoping that you would agree with us that this probably is the best route for Montana to take and that you would put it through as a regular proposal. Thank you, Mr. Chairman.

DELEGATE TOOLE: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Mr. Chairman, I hate to take the plunge into this extremely sensitive subject. Several delegates have gotten up and said that this is the most important thing to come before the Convention. Now it's my turn. I say that this, if not the most important, is certainly the most sensitive thing to come before this Convention. I've thought about it many times, laid awake at night. Over the years, I've had a lot of experience with the Montana highway program in one capacity or another, and in 1955 and 1956, I supported the antidiversion amendment in the Legislature; but over the years, as I have observed the Highway Department operating, I have gradually changed my mind, and now I oppose it strenuously. I think we are beginning to create a great evil and that this Convention must address itself to that problem. We are force-feeding, Mr. Chairman, to the Highway Department $38 million a year. We have created an independent and unresponsive and gigantic bureaucracy, not responsible for the people, not responsible to the Legislature, and without control. We all know of the unnecessary roads that have been built; we know of emergency situations that have been neglected; we know of the indifference with which the Highway Department regards matters of ecology, stream diversion, the game crossing. We know the Highway Department has yielded to special interests in the construction of certain highways, but we go on force-feeding them the $38 million, locking it into our Constitution. Now, I recognize the popularity of this amendment that passed in 1956 by a vote of a hundred and sixty thousand to 48,000. I have in my files here the names of the supporters, the organizations—and there are 18 powerful business groups—18—10 large labor unions, including the AFL-CIO. I won't read the list unless the Convention so desires, but I submit to you, Mr. Chairman, that this popularity is beginning to wane as people become disaffected with the activities of the Highway Department. I think the committee has done an admirable job in meeting the problem head-on. As Mr. Rygg stated, they couldn't eliminate it because of its popularity and because of the endangering—because it would endanger the—in my opinion, cause extreme danger to the ratification of the Constitution. The fund is still earmarked, but three-fifths of the Legislature can vote to bring these funds back under legislative control. I think it's a bold and an innovative approach to the problem. Our interstate system is nearing completion, although it has been delayed. Our secondary and primary systems are coming up to standards. There is still much work to be done, and I submit to you, if this report is adopted, that work will continue. We're not going to abandon the Montana highway program. I just think it's time for another look. Should we continue to lock in these vast millions with changing attitudes, changing needs? Attitudes toward the automobile are changing, and its use. The automobile is beginning to create vast social and economic problems. There's a desperate need in some of our communities for adequate mass transportation systems which the communities are unable to finance. It may be that at some time in the future it will be more practical and less expensive to have a monorail running between here and Great Falls. Should we prevent the development of such technology by locking this in forever and constantly force-feeding this money into the construction of more and more highways without regard for the advancing technology which may change the need for those highways? We go on feeding an ever-growing, unresponsive agency. We should open the door. We should allow, then, for future changes and we should reclaim this money, for the people. I recognize that this $38 million brings in 60 to 70 million dollars of federal funds. This is a very knotty problem, but the federal highway trust fund itself is now under attack and there are many serious suggestions for the diversion of moneys from the federal highway trust fund to the mass transit problems of the cities of the east and west coasts. I think we should seize our own destiny and not become the victims of a force-feed on us by the federal government in matching funds. I know the argument that if we give the money back to the Legislature that the Legislature will fritter them away in their desperate need for funds; that they'll spend them on relief; that they'll spend them on schools. They might want to subsidize mass transportation in Billings, Great Falls, Missoula, Helena or Butte. In my opinion, the Legislature should be permitted to do so; if they want to use gas tax money for schools, for mass transportation, for welfare, they should be permitted to do so. I am going to conclude my remarks on this subject now, Mr. Chairman. Later on, I might have an alternative to present. I think it's necessary that we present an alternative on the ballot, and as of this moment I don't know what that alternative will be. And I want to hear the debate, and then I hope to present to the Convention some sort of alternative so that the people, on this issue, will have a chance to vote in a rather clear-cut way on two clear-cut decisions. Thank you, Mr. Chairman. I support the committee report.

CHAIRMAN GRAYBILL: Is there other discussion of Section 6? (No response) Very well, members of the committee, you have before you, on the recommendation of Mr. Rygg that when this committee does arise and report, after having under consideration Section 6 of the Revenue and Finance Proposal, that it recommend the same do pass.

Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, I'm amazed that we're about to vote on this thing and there's been no more discussion than what Mr. Toole did, and we're about to take a vote. (Laughter) Now, I—it may be very laudable for Mr. Toole to want to subsidize mass transportation in Great Falls, Billings or Missoula, or wherever. I can't say that I want to pay gasoline taxes to subsidize the mass transportation of those areas. We don't happen to need mass transportation in Shelby, Montana, (Laughter) and I'd just as soon stay out of Great Falls, Billings and Missoula, and I find along the northern part of the State of Montana about everything that I want. And I think this is a terrible thing, if we are just going to vote on the committee—the proposal without any discussion. We're changing an amendment that was passed by the people of the State of Montana not so long ago. I'm not so sure that if the Highway Department is not responsive to the needs of the people—and it's pretty autocratic, I'll admit—and that maybe we ought to do away with the gasoline tax; maybe we ought to reduce the amount. But I don't think we ought to leave it up to the Legislature on a matter that's been voted on by the people. I'd like to hear a little more discussion on this matter.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, a point of order. Am I committed to vote for something if I make an amendment?

CHAIRMAN GRAYBILL: No, you can vote as you please.

DELEGATE SCANLIN: Okay. Mr. Chairman, in order to follow the rules of procedure and get some debate on this very important subject, I would like to move, Mr. Chairman, to delete Section 7 of the Committee Proposal and substitute Section 1(b) of Article XII of the present Constitution of the State of Montana.

CHAIRMAN GRAYBILL: Mr. Scanlin, do you have Section 1(b) written out for the Chair?

DELEGATE SCANLIN: Yes, I do, sir. I think everybody has a copy of it.

CHAIRMAN GRAYBILL: All right, is this unsigned amendment yours? Antidiversions amendment, it says at the top of the page; is that yours?

DELEGATE SCANLIN: Section 6. Mr. Chairman, I may have made a mistake. It's Section 6 of the proposed article.

CHAIRMAN GRAYBILL: Right.

DELEGATE SCANLIN: Committee proposal.

CHAIRMAN GRAYBILL: The Chair understands that Mr. Scanlin has offered an amendment—which is unsigned, but we'll put his name on it—on your desks, and his amendment would delete Section 6 of the committee report and substitute therefore Section 1(b), the old—or the language from the existing Article XII, 1(b), of the Constitution. So Mr. Scanlin's amendment is to delete Section 6 in its entirety and substitute therefor Article XII, Section 1(b), language from the present Constitution.

Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, I'd yield to anybody who would like to speak on this subject. (Laughter)

CHAIRMAN GRAYBILL: Very well, the Chair accepts Mr. Scanlin's amendment for discussion.

Mr. Martin.

DELEGATE MARTIN: Mr. Chairman, I hesitate but I must acknowledge that 1(b) is partially my baby. It so happened that in 1955 when this was before the Legislature for consideration, I happened to be down in the Governor's office and was sent up here to lobby on behalf of the passage of this through the House and almost was put—placed in contempt of the House for buttonholing delegates at that time. At the time, certainly, there was a desperate need for this sort of funds to build the highways with the interstate coming on and the program that was developing, and certainly it wasn't intended that the Highway Department would become as far from the people as it has since gotten to be. And still we haven't got the interstate completed, and there certainly is need. And I'm hopeful that before we divert all this money away from the Highway Department, that we at least build the—complete the Bozeman hill between Livingston and Bozeman. I think that the committee has put some flexibility in this program, and I would resist the substitute motion.

CHAIRMAN GRAYBILL: Mrs. Bowman.

DELEGATE BOWMAN: Mr. Chairman. I rise to resist the substitute motion made by Mr. Scanlin, because I'm one of the idealists who wish we would get rid of the whole thing; but I've been here long enough to realize that that is not possible. However, I would like to quote very briefly from a report made by the Montana Legislative Council in 1962, entitled *State Treasury Funds Structure*. It says: "As a means of allocating resources, earmarking is inefficient because it fails to recognize relativity of needs. Resources are distributed not by a conscious evaluation of the needs of all agencies but by an arbitrary constitutional and statutory formulas. A dedicated revenue tends to create a vested interest in continuing arrangements, which experience and passage of time may prove to be contrary to the public interest." And I submit that this is painfully apparent as far as the Highway Department is concerned. Going on: "Even if there be at first a proper relation between the proceeds of a given tax and a need for expenditure for a given service, there is no reason to assume that the relationship will continue to exist. Experience demonstrates that once a dedicated fund has been set up, it is extremely difficult to deal with on its merits." I would like to comment on Mr. Aronow's statement that he did not feel that mass transit was necessary in Shelby. I think that his funneling of his gas tax money into a possible mass transit system between Helena and Great Falls is no different than the people of Nebraska whose tax money is funneled into the State of Montana in the federal highway fund. It's somebody else's money paying for our roads. I think that the two are comparable. I think that Parkinson's Law, which says "expenditures rise to meet income", could be paraphrased to say, "congestion arises to meet highway capacity". The Highway Department is a self-perpetuating bureaucracy and will continue to be so as long as it continues to be locked in the way it is at this point. I think that the committee has worked out a reasonable compromise. I think it allows for flexibility should the time come when maybe we will need some mass transit in Montana. I realize it's hard to visualize that now, but we're not writing this Constitution for now. Therefore, I urge that you reject Mr. Scanlin's substitute motion and vote for the committee proposal. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman, would I be out of order, at this time, to ask a member of the committee a question with regard to Section 6?

CHAIRMAN GRAYBILL: No, I think not. This is general debate of the problem.

DELEGATE MELVIN: Well, I notice that the committee has allowed for the payment of highway patrolmen's salaries and driver education and apparently cut down on the fees from the gross vehicle weight and registration and sale of new cars. Has any member of the committee any estimate as to the difference in the income that this would make with regard to highway construction?

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I believe that Mr. Furlong has those figures. I think the revenue was cut down about two-plus million dollars, but I think maybe Mr. Furlong has the figures.

CHAIRMAN GRAYBILL: Do you, Mr. Furlong?

DELEGATE FURLONG: Mr. Chairman, I'll try. Actually, when we started looking for figures, so much of the moneys were put into one fund that it was almost impossible to unscramble them. But as nearly as our research indicates, the amount of moneys that would have been taken out—will be taken out if you accept Section 6, would be slightly in excess of $2 million.

DELEGATE MELVIN: Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: While I'm on my feet, I might—the—for the benefit of the people, I think the question will probably come up anyhow; I just may save a little time by doing this. The Highway Safety—or the Patrol, which is currently listed, is around three—three and a quarter million dollars. The driver's education, which is under the present program—I think the latest figure the state has, it's costing, on the basis of some incomplete returns from the—all of the schools participating, would be about $72 per child. The total program would cost somewhere around $750,000. Really, those are the only moneys disturbed by the first section of Section 6. The only other disturbance that could be created would be the three-fifths vote which would authorize the Legislature to divert or the initiative amendment. I think those are really the only figures involved in the section. I hope that answers your question.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President, I am in sympathy with what Mr. Toole said about the Highway Department and I realize that we have quite a problem there, but I also realize that we do have a lot of problems with roads in Montana yet. We have a lot of secondary roads that certainly need improvement—many hundreds of miles of them. We have many hundreds of miles in our state highways that need improvement, and we need this money to do that with. I think that if some provision was made in here that the Legislature may review the activities of the Highway Department, I wouldn't have any objection to it; but I feel this way: that until such a time as we no longer have need for building our highways and improving our road system, that this money should be used for this purpose. And when we feel that we should divert these funds or remove them, then I want to have a different clause. I want to know what these moneys are going to be diverted for. We are paying a tremendous tax on gasoline to build our roads, and if we are going to build roads with that money, let's build roads with them. But if we are going to permit the Legislature, by a three-fifths vote, to divert these funds for some other purpose, then I think it's an option that the people should have a chance to vote on. I suggest that the last sentence of this paragraph should be removed for this reason—that if and when we think that we should not necessarily need this tax on gasoline to build roads, if we think we want to do it—put the tax on for some other purpose—then the people should be able to decide what purpose we're going to use this money for and not have the Legislature merely divert the money to some other use without the knowledge of what we're going to do with it. I would move, Mr. President, that the last sentence in Section 6 of the majority proposal be stricken.

CHAIRMAN GRAYBILL: Mr. Wilson, you're out of order. The motion at the moment is Mr. Scanlin's motion to delete Section 6 and substitute 1(b). Therefore, the issue before the house is 1(b), and you can't amend something that isn't before us. But I'll be sure that you have a chance later on to do that if we ever get back to Section 6.

DELEGATE WILSON: You bet. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, would Mr. Scanlin yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Scanlin?

DELEGATE SCANLIN: Happy to.

DELEGATE REICHERT: Mr. Scanlin, during the last session of the Legislature, Senate Bill 99 was passed, both houses, it was signed by the Governor, but even before the ink was dry, its constitutionality was questioned. This is a bill that would have enabled us to save about three and a quarter million dollars because the Highway Patrolmen would have been paid from the Highway Department funds rather than from the general fund. Do you feel—and this is because of our present Constitution, the section you just recommended we adopt, Section 1(b)—do you feel that this is justifiable that we should retain this old section so we may not pay Highway Patrolmen with Highway Department funds?

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman. Mrs. Reichert, my intelligence is no match for yours. I have no answer.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, will Mr. Furlong yield to a question?

CHAIRMAN GRAYBILL: Mr. Furlong?

DELEGATE FURLONG: Yes.

DELEGATE HABEDANK: Mr. Furlong, did I understand your figures correctly, that taking out the excise and license taxes and these other things—gross vehicle weight—would reduce the income to the highway fund approximately $2 million?

DELEGATE FURLONG: No, those aren't being taken out. Those are being left in.

DELEGATE HABEDANK: So there is no reduction of that $2 million under your—under the proposed measure?

DELEGATE FURLONG: No, the $2 million I'm talking about would be basically—I have the figures here. The new car sales tax is really what it is—it's about $1,192,000—and then there are some minor other fees which are currently all put together under what's known as gross vehicle weight. It has nothing to do with the figures that you're reading. I'm referring to the first word "revenue"

DELEGATE HABEDANK: Mr. Chairman, may I ask a series of questions?

CHAIRMAN GRAYBILL: You may.

DELEGATE HABEDANK: Just so I understand—regardless of from where it comes, the revenue under your proposed Section 6 over the revenue that goes into the highway fund in Section 1(b) would be approximately $2 million less.

DELEGATE FURLONG: That's right.

DELEGATE HABEDANK: Then we would add to the expense that you put into Section 6 that is not presently covered in Section 1(b), driver education, which you estimate at $750,000—

DELEGATE FURLONG: That's right.

DELEGATE HABEDANK: —and then you add the cost to the Highway Patrol, three and a quarter million dollars, which is not presently covered by 1(b).

DELEGATE FURLONG: No, it is presently covered by 1(b). It's being paid right now. It's under—

DELEGATE HABEDANK: Out of the—the Highway Patrol is presently being paid out of highway revenues that—

DELEGATE FURLONG: Yes, that's right. And I understand that there is a Supreme Court test case on its legality right now.

DELEGATE HABEDANK: If that case is held that it—that can't be done, then there would be an additional 3 million, three and a quarter million that would be paid definitely as provided in your Section 6?

DELEGATE FURLONG: If I understand the question, if it's held unconstitutional under the old Constitution and Section 6 is approved in the new one, then it would be legal. It'd be three and a quarter million dollars, yes.

DELEGATE HABEDANK: So the total difference—or possible difference at the present time of revenue to the highway fund for highway development purposes under your proposed Section 6 and Section 1(b), assuming the Supreme Court holds the Highway Patrol cannot be paid out of those funds, would be about $6 million less annually?

DELEGATE FURLONG: Yes, something like that.

DELEGATE HABEDANK: Thank you. That's annually or biennially?

DELEGATE FURLONG: Now you've thrown me a curve; I'm not sure. But no, I think these figures would represent annual income. It happens to be a biennial budget, but—

DELEGATE HABEDANK: Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Would—Mr. President, would Mrs. Reichert yield to a question?

CHAIRMAN GRAYBILL: Mrs. Reichert, will you yield?

DELEGATE REICHERT: Yes.

DELEGATE DAVIS: Tell me about the 3 million—I got lost on that—that we lost.

DELEGATE REICHERT: Because, if the Supreme Court rules upon the constitutionality on this, we will have lost three and a quarter million dollars—I thought it was a biennium, perhaps I'm wrong—because the money will have to be taken from the general fund. The constitutionality was questioned before it was even introduced in the Senate. I talked to Mr. Chittim about it, because I was covering that session, and I asked him. And he said—he showed me legal proof that it was unconstitutional, before it got through the Senate, before it got through the House, before the Governor signed it. And so that's why I favor the majority proposal. I feel that we must have this ability.

DELEGATE DAVIS: Would Mrs. Reichert yield to another question?

DELEGATE REICHERT: Yes.

DELEGATE DAVIS: Well, where did the three and a half million go? That's what I'm puzzled about.

DELEGATE REICHERT: Well, it would have to be taken from the general fund if we can't pay it from the Highway Department, if it's unconstitutional.

DELEGATE DAVIS: But if it stays in the Highway Department, it'll still go—we'll still have it in one fund or the other, won't we?

DELEGATE REICHERT: But the problem is, we have control of the general fund; we have no control over the Highway Department fund. I think that's the critical issue.

DELEGATE DAVIS: Thank you.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman, I think there's a little confusion here. The appropriations are generally made on a biennial basis and the income is generally figured on an annual basis; so the three and a half million, I think, is a biennial appropriation and this other money here would be an annual situation. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. Chairman, I would rise to oppose the substitute motion. I would like to just make a couple of brief comments to answer some statements that have been made and some questions that have been left, perhaps, in the minds of this body. First, I would like to again reiterate the oneness of the committee in their desire to come up with something that would treat all parties fairly, and we had a good deal of—a lot of testimony, and we had more than discussion—I would even call it some pressure in some cases—for us to either delete completely or to leave as is, because people feel pretty sincerely about this. Our picking of the figure three-fifths of a vote of the legislative body was done not necessarily to hang a hammer over the head of the Highway Department, because we all recognize that the Highway Department has done an awful lot of good things for the State of Montana. When you get big, you get a little bit inefficient and you hurt a lot of people's feelings, maybe; but at the same time, the Highway Department, in their overall effort, has been a real credit to the State of Montana. However, as this income from these various contributions grow each year—and it appears to us that the figure is going up somewhere in the range of two and a half to three million dollars per year—as we look down the road maybe 20 years hence, if the income from the sale of gasoline or from the gasoline tax and these other sources of income—say, pick an average figure over the next 20 years of $3 million, that would add to the 38 million that will come in this year another $60 million. So we're talking about somewhere in the neighborhood of 90 to a hundred million dollars coming in to the Highway Department. Well, one of our concerns was that down the road somewhere we're going to have federal highways fairly well crisscrossing our state. It may not be 5 years; it may not be 10; it may not be 40; but at some point in the future, the construction of federal highways probably is going to be diminished somewhat from where it is now; and at that point—and for Mr. Wilson's edification and clarification—we want to be able to divert money into the building of county roads and city streets. Now, we also want to be able to do this—or want the Legislature to be able to do this at an early time. Some of us served as legislators and we remember how difficult it was for the Legislature to come up with some money to help the cities back in the 1967 Session. It was a real problem where the money was going to come from. There were some questions of constitutionality of whatever happened, but about a million dollars was arranged—through working around some agreements and some late-night sessions and one thing or another—would be channeled back to the cities to help in their street programs. This will become more and more of a problem for the cities and the counties because, one, more traffic and, two, the—some of the state highways are probably going to become county roads in the future. Now, if the responsiveness of the Highway Department is sharpened a little bit when they look at that three-fifths or 60 percent figure, it could be one of the real blessings that the Legislature finds themselves blessed with in the years to come. Because if there is no possibility of changing this diversion, other than another constitutional amendment, the responsiveness may be a very difficult-to-find commodity—something like bird droppings in a cuckoo clock; they just may not be around. (Laughter) So the three-fifths will make the Highway Department very responsive. Now, if what the proponents for a hundred percent diversion say is true, the Highway Department has nothing to worry about. All they have to do is perform the fashion that the proponents of the antidiversion measure say they are going to, and we'll have no problem. However, if they do not perform in this fashion, at some point they will have to come to the Legislature and worry about their share, or what is—the way their money is being handled. Another point that didn't come up and I think is one that should be mentioned is it takes about $14 million, as I understand, to obtain the federal matching money. So our committee didn't feel that we were jeopardizing our federal matching funds by any action that we took in writing this, what we thought to be a good compromise article, and I would urge your support of the majority report. Thank you very much.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. Scanlin's motion to amend Section 6 by deleting it and substituting Section 1(b).

Mr. Scanlin, do you want to close?

DELEGATE SCANLIN: Thank you, Mr. Chairman. Several years ago, in another political campaign, it was my responsibility to see why it was that the city of Billings was filled with chuckholes and the people of Ward 5 were putting $1 million a year in taxes into highway diversion funds and not 1 cent at that time was returning to the city of Billings. Seventy-five percent of the driving, the consumption of the gasoline on which those taxes were paid, were used in that area; and inquiring from the Bureau of Public Roads, Senator Metcalf, and the Highway Department of the State of Montana, I received at least 10 pounds of material and no satisfaction. Since that time there has been a change of heart and, Mr. Chairman, I wish to withdraw my amendment.

CHAIRMAN GRAYBILL: Mr. Scanlin, you've withdrawn your amendment.

Mr. Foster.

DELEGATE FOSTER: Mr. President, fellow delegates. I think that Mr. Scanlin made his motion for a very good reason, for debate, and I would like to renew the motion and ask for a roll call vote.

CHAIRMAN GRAYBILL: Very well, Mr. Foster renews Mr. Scanlin's motion and asks for a roll call vote. So many as shall be—First of all, I should say that the sense of the amendment is to put Section 1(b) from the existing Constitution, the antidiversion amendment, into the new Constitution in place of Section 6 as proposed by the committee. So many as shall be in favor of that motion, vote Aye; and so many as shall be opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Close the ballot and take the ballot, please.

Aasheim	Aye
Anderson, J.	Aye
Anderson, O.	Nay
Arbanas	Nay
Arness	Excused
Aronow	Aye
Artz	Nay
Ask	Nay
Babcock	Aye
Barnard	Aye
Bates	Absent
Belcher	Absent
Berg	Nay
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Nay
Brazier	Nay
Brown	Nay
Bugbee	Nay
Burkhardt	Nay
Cain	Nay

Campbell	Nay
Cate	Absent
Champoux	Nay
Choate	Nay
Conover	Nay
Cross	Nay
Dahood	Absent
Davis	Nay
Delaney	Aye
Driscoll	Nay
Drum	Nay
Eck	Nay
Erdmann	Nay
Eskildsen	Absent
Etchart	Aye
Felt	Absent
Foster	Nay
Furlong	Nay
Garlington	Nay
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Nay
Harlow	Nay
Harper	Nay
Harrington	Nay
Heliker	Nay
Holland	Excused
Jacobsen	Nay
James	Nay
Johnson	Aye
Joyce	Nay
Kamhoot	Nay
Kelleher	Absent
Leuthold	Nay
Loendorf	Nay
Lorello	Nay
Mahoney	Aye
Mansfield	Aye
Martin	Nay
McCarvel	Nay
McDonough	Nay
McKeon	Nay
McNeil	Nay
Melvin	Nay
Monroe	Nay
Murray	Aye
Noble	Nay
Nutting	Aye
Payne	Excused
Pemberton	Aye
Rebal	Nay
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	Aye
Rygg	Nay
Scanlin	Nay
Schiltz	Nay
Siderius	Nay
Simon	Nay
Skari	Nay
Sparks	Aye
Speer	Nay
Studer	Aye
Sullivan	Nay
Swanberg	Absent
Toole	Nay
Van Buskirk	Nay
Vermillion	Nay
Wagner	Nay
Ward	Nay
Warden	Nay
Wilson	Aye
Woodmansey	Nay
Mr. Chairman	Nay

CLERK HANSON: Mr. Chairman, 17 delegates voting Aye, 72 voting No.

CHAIRMAN GRAYBILL: 72 delegates having voted No and 17 having voted Aye, that amendment is defeated. The issue, then, is on Section 6 as shown on page 12 of the Revenue and Finance Proposal. The committee has moved—the majority has moved Section 6. Is there further debate?

Mr. Aasheim.

DELEGATE AASHEIM: Will Mr. Drum yield to a question?

DELEGATE DRUM: I yield, Mr. Aasheim.

DELEGATE AASHEIM: I don't know why I picked on you—

DELEGATE DRUM: Please don't, then.

DELEGATE AASHEIM: I'm just wanting to ask a question here. You have said that moneys may be used for highway safety, driver education, tourist promotion, and for administrative and collection costs as authorized by the Legislative Assembly. May I ask why you think the highway money should be used for driver education?

DELEGATE DRUM: I think, Mr. Aasheim, that we heard sufficient testimony that felt that the origination of the funds coming from this source should be directed to probably the safety—future safety on the highways. And I think the safety, including the patrol situation, as well as the safety of the people who learn how to drive at a young age and become better drivers, was probably considered at the same time. I think it came as a result of testimony, and I don't remember that it was really debated or discussed in detail. Perhaps other members of the committee have different recollection than I.

DELEGATE AASHEIM: Thank you, Mr. Drum. I'm not an attorney and I'm not going to put you on the spot, but I'm going to put myself on the spot. In 1965 I was the author of House Bills 91 and 92, which introduced the driver education program in the State of Montana, and I have been very conscious, I have been very concerned about driver education ever since that time. It's a very nice-sounding, it's a very altruistic-sounding proposition. Driver education is good; there's no doubt about it. And I fought very diligently and very hard to introduce that—those two bills, and we got them through. And the idea was, at that time, that we were to help with driver education but that this was sort of a self-help program, that the individuals who wanted it were to go out and help pay for it, because it was going to cost a lot of money to do it properly. And since that time I have been concerned with safety on the highways, and I have found that the greatest promotion towards safety on the highways is good highways. The better your highways, the fewer the accidents. You just look at the interstate system and I think you'll find the fatality rate is something like three and a half, depending on where it is; whereas on other highways in Montana, probably five to seven, because it happens on the poor roads. Now, I haven't—I have read a lot about driver's education and I can find you where driver's education is detrimental. Now, I don't believe it, because I believe in education; but I can foresee a body like this, when they get appeals for money for driver's education, they'll say, "Well, there's a lot of money here; we'll just take it out. It sounds good. We'll send it back out in the country, because it's good political philosophy. It'll get me votes." And in the meantime, we're taking money out of a fund to build better highways, and that's what Montana needs. And I believe that if we want driver's education to mean something, let's let them pay for it themselves with the assistance of the local schools. Why make a plum out of this highway fund? Let's use it for building roads and maintenance of roads. So, Mr. Chairman—and again I'm going to be very unpopular—I move to strike, on line 11, page 12, "driver's education". Not with the idea that I'm against driver's education, because right now I can ask any one of you and you can't answer me, "What good is it doing?" What good is it doing? All we can say subjectively: we think it's good. I went down to the Highway Patrol and said, "What proof do we have that this is doing any good?" Well, they can't answer me, and I knew they couldn't. The records are still about the same as they were in 1965, about the same number of fatalities. This is a nebulous thing; you can't pinpoint it. But I believe that—let this thing stay back home. Let the people dig up their own shekels and pay for this program. Let's not pick in the highway funds, because I believe highway funds should be made for building highways.

CHAIRMAN GRAYBILL: Very well, Mr. Aasheim has amended line 11 of the Section 6 of the majority proposal by moving to delete the words "driver education". Is there discussion? Mr. Berg.

DELEGATE BERG: Will Mr. Aasheim yield to a question?

DELEGATE AASHEIM: Yes, Mr. Berg.

DELEGATE BERG: When you promoted driver's education, did you do it as a matter of highway safety?

DELEGATE AASHEIM: I certainly did.

DELEGATE BERG: And now, if you delete driver's education and leave in highway safety, have you really changed the situation?

DELEGATE AASHEIM: Well, highway safety in general is more—is general; driver's education is specific. And I would hate to take this general statement out, although it might be taken out.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, fellow delegates, I rise in opposition to Mr. Aasheim's proposal. I think, in keeping with what's gone on around here, I should tell you that I teach driver's education. (Laughter) I'd like to also tell you I had nothing to do with putting it in there but I'm glad it's there. I would like the assembly to know, without trying to get really involved, that there are approximately 33 national studies that have been made on the effectiveness of driver's education; and out of the 33 national studies, 30 of them indicate that safety education and driver's training are, in fact, beneficial and that they probably save the people in the United States billions of dollars a year in reduced insurance rates for teenage drivers, in reduced loss of property and of life. Thank you.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, I rise in opposition to the amendment. I'd just like to underline Mr. Furlong's reference to reduced insurance rates. This seems to me to be the best evidence on Mr. Aasheim's question. Insurance companies are pretty hardheaded in setting their rates and they wouldn't give lower rates unless there was some benefit through driver's education.

CHAIRMAN GRAYBILL: Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman, I submit that the shekels for the driver's education are coming from the people that are using it at this point. That's the part of that $750,000. We're using the cars and the highways and the gasoline.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, I rise in resistance to striking driver's education from this program. I would like to answer Mr. Aasheim's statement as to what proof we have, whether any of us know that it has done any good. I reared four children, and when they took their driver's education, I paid, I believe, twenty or twenty-five dollars for it. My children benefited from it, but the children who did not have the twenty or twenty-five dollars from a parent who could afford to pay for it needed that driver education as much or more than my children. And those kids are getting out in cars and they're going up and down the streets and highways of this nation, and I think that the benefit my children derived is equally available under this program to those who are going to drive whether we educate them or not, and I would hope that the day would come that no child will be able to secure his driver's license until he has completed a driver's education course. When we make that mandatory, as we can do with this—in this program, amply funded, I think we will make a great step forward for highway safety. I'm glad that Mr. Aasheim got this measure through in the first instance.

CHAIRMAN GRAYBILL: Mr. Anderson.

DELEGATE OSCAR ANDERSON: I rise in opposition to the Aasheim amendment, and I'm not worried about a bunch of driver's education people coming in here and influencing the Legislature. I have some figures ahead of me here. There are 404,674 people living in the various cities and towns in Montana, and they got a million eight hundred thousand out of this fund last year; and they're going to be back, asking for more or at least that much. There is also a rural population of two hundred eighty-nine thousand, six hundred and eighty-one—671 people and they got a million two hundred thousand dollars out of this fund last year, and they'll be able to be up there yelling for their share, too; and I think we can get proper balances in these people asking for these funds. Thank you.

CHAIRMAN GRAYBILL: Is there other discussion of Mr. Aasheim's amendment, or may he close? Mr. Aasheim, you may—

Oh, Mrs. Bates.

DELEGATE BATES: Yes, Mr. Chairman. Just for a point of information, to my knowledge and understanding of the highway structure and the Highway Commission, that now the appropriations that come from all these funds are not under the jurisdiction of the Legislature. Then, in looking at this section, I see that the word, in line 9—that says, after the deduction of the funds that are listed here for the administration and the appropriations. Only after this is done, then, will the Legislature, by a three-fifths vote of its members, be able to appropriate. Now, I don't know—maybe I'm not reading this correctly, but I don't think that last three—or that last sentence has any place, because I doubt that there'll ever be any money left over; and maybe I'm interpreting this wrong. Would someone clarify ths entire section for me, please? Thank you.

CHAIRMAN GRAYBILL: Mr. Furlong, do you want to try?

DELEGATE FURLONG: Mr. Chairman, I'm not sure I can answer it. I have here a minor—or small statement for the period of July 1st, 1970, through June 30, 1971, that shows an ending balance as of 6/30/71 of nine and a quarter million dollars. Now, that's for one year, rather than the biennium.

DELEGATE BATES: (Inaudible)

CHAIRMAN GRAYBILL: Just a minute, Mrs. Bates. If you want to ask another question, you stand up and get the Chair's permission.

DELEGATE BATES: Mr. Chairman, could I ask another question?

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Furlong, is this after the appropriations have been made out of the highway funds? This is the way I read it.

DELEGATE FURLONG: Yes, according to this record it is, under the existing Article XII, 1(b).

DELEGATE BATES: Oh, then there would be some. Okay, thank you. That's what I—

CHAIRMAN GRAYBILL: Mr. Aasheim, you may close.

DELEGATE AASHEIM: Will Mr. Furlong yield to a question?

CHAIRMAN GRAYBILL: Mr. Furlong, will you yield?

DELEGATE FURLONG: Yes.

DELEGATE AASHEIM: Mr. Furlong, there is no question in my mind about your ability as an instructor, whether it's in the high school or as a driver. Were any students in your particular area denied driver's education?

DELEGATE FURLONG: Yes.

DELEGATE AASHEIM: Will Mr. Furlong yield to any further questions?

CHAIRMAN GRAYBILL: Mr. Furlong, do you want to yield again?

DELEGATE FURLONG: Yes.

DELEGATE AASHEIM: Of the percent who did not take driver's education, how many—what percent of those, as compared to those who did have driver's education—how many were involved in accidents?

DELEGATE FURLONG: Mr. Aasheim, I cannot answer that. I have no knowledge.

DELEGATE AASHEIM: Mr. Chairman, will he yield to another question?

CHAIRMAN GRAYBILL: Mr. Furlong?

DELEGATE FURLONG: Yes.

DELEGATE AASHEIM: If you can't answer that question, how do you know the driver's education program is what you say it is?

DELEGATE FURLONG: I will repeat again, Mr. Aasheim, that out of some 33 national figures—national studies, 30 of them have indicated that driver's training is extremely beneficial. I'd rather quit using the word "driver's training", because I think it should include traffic safety education. It's not just piloting the car around; it includes safety education as well.

DELEGATE AASHEIM: Thank you. Delegates, I'm not arguing against driver's education. Naturally not. But what I'm trying to tell you people—that this should be a local project—for one reason only; that in the process of doing it locally and impending [sic] upon financing it locally, you are becoming aware of the problem of driver's education. You are not only educating youth, you are educating the adults. And further, when you have a fund like this, and this is millions of dollars, don't you realize the weakness of a Legislature to say, "Yes, let's just take it and hand it out—let's just take it and hand it out"? If we're not getting driver's education, we should get it. Now, I sincerely believe that, but I don't believe we should dip into this fund to do it. I think we should leave that money for building highways, for building good highways, and when you have good highways, you'll have less accidents.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, I wanted to make one statement to Mr. Aasheim's closing statement. I really do not wish to finally get in an argument. It is not locally funded now. The driver's education program in the State of Montana is currently being paid for [by] the poor guy on the highway that gets caught with a moving violation. A percentage of that money goes into a state fund and is reimbursed to the towns and cities and schools that offer driver's education. We, in fact, have a state fund right now, and it comes from a percentage of the moving traffic violations. Practically every school in the state is charging, as Mr. Habedank said, from twenty to twenty-five dollars per student out of—they're not out of local funds, they're out of the individual parent's pocket. This could conceivably do just exactly what Mr. Habedank wanted—provide, practically, driver's education for all Montana high school students.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Aasheim's amendment to Section 6 as proposed by the committee, on line 11 on page 12. He wants to take out the words "driver's education".

DELEGATE CAMPBELL: I would like to ask for a roll call vote.

CHAIRMAN GRAYBILL: All right, we'll have a roll call vote. So many as are in favor of taking out "driver's education", vote Aye; and so many as are opposed, vote Nay. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: We'll close the ballot.

Aasheim	Aye
Anderson, J.	Aye
Anderson, O.	Nay
Arbanas	Nay
Arness	Excused
Aronow	Absent
Artz	Nay
Ask	Nay
Babcock	Absent
Barnard	Absent
Bates	Aye
Belcher	Absent
Berg	Nay
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Nay
Brazier	Aye
Brown	Nay
Bugbee	Absent
Burkhardt	Nay
Cain	Nay
Campbell	Nay
Cate	Nay
Champoux	Nay
Choate	Nay
Conover	Nay
Cross	Nay
Dahood	Absent
Davis	Nay
Delaney	Nay
Driscoll	Nay
Drum	Nay
Eck	Nay
Erdmann	Nay
Eskildsen	Absent
Etchart	Nay
Felt	Absent
Foster	Nay
Furlong	Absent
Garlington	Nay
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Nay
Harlow	Nay
Harper	Nay
Harrington	Nay
Heliker	Nay
Holland	Excused
Jacobsen	Nay
James	Nay
Johnson	Nay
Joyce	Nay
Kamhoot	Aye
Kelleher	Nay
Leuthold	Nay
Loendorf	Nay
Lorello	Nay
Mahoney	Aye
Mansfield	Aye
Martin	Nay
McCarvel	Nay
McDonough	Nay
McKeon	Nay
McNeil	Nay
Melvin	Nay
Monroe	Nay
Murray	Absent
Noble	Nay
Nutting	Nay
Payne	Excused
Pemberton	Nay
Rebal	Nay
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	Nay
Rygg	Nay

Scanlin	Nay
Schiltz	Nay
Siderius	Nay
Simon	Nay
Skari	Aye
Sparks	Nay
Speer	Nay
Studer	Nay
Sullivan	Nay
Swanberg	Nay
Toole	Nay
Van Buskirk	Nay
Vermillion	Nay
Wagner	Nay
Ward	Nay
Warden	Nay
Wilson	Nay
Woodmansey	Nay
Mr. Chairman	Nay

CLERK HANSON: Mr. Chairman, 8 delegates voting Aye, 79 voting No.

CHAIRMAN GRAYBILL: 79 delegates having—voting No and only 8 Aye, the amendment fails. We're back on Section 6 as proposed by the committee, by the majority report, on page 12.

Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman, I rise in support of the majority proposal. It seems to me we're missing the issue here. I'm amazed that we are talking about how much money should be appropriated in the future for driver's education, how much money should be appropriated for highway construction, how much money we should appropriate for the other functions the Highway Department is expected to accomplish. It seems to me the real issue is how far we should deviate from a basic principle of government. Now, when we re-establish the Executive, Judicial and Legislative branches of government, previously here, I assumed that along with that we established that these various branches should continue to operate as a check on each other. And it seems to me the sole issue here in whether we adopt the majority proposal or go back to the present Constitution is whether we, the people, through our Legislature, should periodically check and determine if state moneys are being spent in a manner consistent with our best interests. I don't think anybody doubts the benefits derived from roads or the need for them; and I believe future Legislatures, the people who are in these future Legislatures, will be able to judge these benefits and determine these needs as well as we can now. I really feel that if we're going to appropriate money here for highways, we have to say we can better judge this now, the amount of moneys that will be needed for roadbuilding purposes in, say, 1984; and if we feel that way, it seems to me, then we should go all the way. We should appropriate the money needed for law enforcement, the money needed for education, and the money needed for all of our other needs. This is a determination that we'll have to make now for a long period in the future. Do we appropriate moneys by a constitution? I think not, and I support the majority. I want my Legislature to take a look at all appropriations in the future and determine if the money is being well spent, and I have confidence they'll continue to appropriate to the Highway Department all the moneys that are needed for roads.

CHAIRMAN GRAYBILL: Now, Mr. Barnard and Mr. Wilson, you both have indicated you wanted to amend Section 6, and I'm waiting for one of you to rise.

Mr. Wilson.

DELEGATE WILSON: Mr. President, I don't know where—there's a new amendment placed on our desks. I don't know where it came from. It looks pretty good to me. Are we going to discuss it? Do you have a copy of it?

CHAIRMAN GRAYBILL: I have a copy of it. I wrote it and Mr. Toole put it out and we can talk about it later, but I think we'd better decide on Section 6 first. I don't think Mr. Toole wants to move it yet; and neither do I, yet.

DELEGATE WILSON: Well, Mr. President, then I remove—renew my motion to strike the last sentence in Section 6 of the majority report.

CHAIRMAN GRAYBILL: Very well. Mr. Wilson makes a motion to strike the last sentence and, Mr. Barnard, I think this is essentially the same thing as you were proposing, so I take it that takes care of your proposal. And the effect of this is to remove the language which the subcommittee—or the committee put into Section 6, calling for a three-fifths vote of the members of the Legislative Assembly. So the motion now is to delete lines 13 through 16—that is, the sentence on lines 13 through 16 on page 12. Has the effect of deleting the legislative three-fifths check on the highway earmarking paragraph. Is there discussion?

Mr. Toole.

DELEGATE TOOLE: Mr. Chairman, I won't make a long speech in response to this, as I covered it before; but obviously, if you do this, you cut the heart out of the whole thing because that's the sentence which returns the control of this vast sum of money to the people. And I would strenuously resist any attempt to eliminate from the committee report the element of legislative control.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, I rise to resist the proposed deletion. One of the things in campaigning that I said was, if there was some way to make the Highway Department responsive to the people without taking away the earmarking of the funds to a certain extent, this is what I wanted to do. And for this reason, I support the majority position on this, because I feel that it answers the problem that I had with the earmarking of the funds to the Highway Department. I feel in this way the Highway Department will get all of the money as long as they are responsive and as long as they are doing a good job, and so I support the majority proposal.

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, I'd like to say that I'm one of the delegates that comes from the sagebrush country down there, and we have a great concern for secondary roads, feeder roads, farm-to-market roads, and county roads—that sort of thing. And I'd like to direct a question to Mr. Drum, if I might.

CHAIRMAN GRAYBILL: Mr. who?

DELEGATE CHOATE: Well, Mr. Drum.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE CHOATE: Dave, do you envision in this report that there will be any change in the position of the Highway Department as to use of funds for secondary or something other than perhaps primary and interstate roads? We—in part of our district, over in Carter County, they're the only county in the United States that does not have a paved road going through their county. There is a road that's paved from Baker down to Ekalaka, and that ends there. Now, these people have a real concern. They have been trying for 20 years to get it paved on down to Alzada. Do you think that any help in this area can be from the wording in your proposition?

DELEGATE DRUM: Yes. (Laughter)

DELEGATE CHOATE: Thank you. Another question, please. How do you propose that this might be accomplished?

DELEGATE DRUM: Mr. Chairman. Mr. Choate, I—this is one of the considerations that the committee had, is that the Highway Department would be more responsive to the needs of county and city roads for maintenance and for perhaps construction, for resurfacing. As the people's representatives come over here every two years, if they are looking at a bad road situation they hear a lot about it from the voters, they're going to reflect that attitude to the Highway Department. And now we have made it constitutional for them to channel more money back in that direction, and this is one of the reasons that we feel very confident that not only is this a good compromise of all parties, it's going to result in a lot better roads in counties and cities in Montana.

CHAIRMAN GRAYBILL: Mr. Harper, before you speak, the Chair would like to announce that, after consultation with the Committee Chairman, we are going to attempt to finish Section 6 right now, and then we don't intend to work tonight, because we think if we can finish Section 6 we'll be all right tomorrow. That just gives you all an idea what we're going to be doing in the next hour.

Mr. Harper.

DELEGATE HARPER: Very good. I'd like to press on then. Who did you say put this unsigned Section 6 on our desks? (Laughter)

CHAIRMAN GRAYBILL: I said that Mr. Toole, I believe, had it put out and I wrote it; and we have an idea to use it but not yet. Is that right, Mr. Toole?

DELEGATE TOOLE: That is correct.

DELEGATE HARPER: Am I talking about—you put on the desks the thing you just talked against, is that right?

CHAIRMAN GRAYBILL: Well, I may—maybe there's too many things put on the desks

that I don't have copies of.
Mr. Toole.

DELEGATE TOOLE: Yes. It was my intention, and I still don't know what—how to go about it to make it available to the people of this state to have an alternative on the ballot. This is one of the alternatives that we have discussed. I thought that it should be distributed so that you could be studying it, because it may be that after the—at the conclusion of the debate—or after we have heard enough debate, that I will make a proposal that this wording be placed on the ballot as an alternative. Now, the word "Section 6" may confuse you there; that's just the way it happened to be written up.

CHAIRMAN GRAYBILL: Mr. Harper, it's the one with the Roman numeral Section 6.

DELEGATE TOOLE: Yes, the Roman numeral Section 6. Just ignore that. Just think of the—just ignore the Roman numeral Section 6.

DELEGATE HARPER: Well, what I was going to get at—if I'm—I just want to be talking against the thing that I think I'm talking against, that's all. It seems to me that this is a rewriting of Section 1(b) of the present article.

CHAIRMAN GRAYBILL: Well, Mr. Harper, let's stay on the subject; the subject is Mr. Wilson's motion to strike the last section of Section 6 as it appears on page 12. Now, if you'll stick with that and not worry about the things that are just put on your desk to read in your spare time—

DELEGATE HARPER: I'm sorry. That's what I was asking, if this is what's before us; so the answer is, "No, it's not"?

CHAIRMAN GRAYBILL: The answer is, "No".
Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman, I rise in support of Mr. Wilson's motion and in opposition to the majority report. I would just like to point out that several people from the following associations have met and if the majority proposal goes in the way it is, they have all—they have no alternative but to work against the Constitution: The Wood Products Association; the Montana Motor Transport Association, which has 400 members; the Montana Automobile Dealers, which has 25,000 members; Montana Auto Dealers, 400; Montana Highway Users Federation; AFL-CIO; the Montana Farmers Union; the Montana Taxpayers Association; the Montana Hardware and Implement Dealers, 400 people; and the Montana Petroleum Association. I would like to just urge you to keep in mind when you pass this.

CHAIRMAN GRAYBILL: Mr. Roeder.

DELEGATE ROEDER: I wasn't going to say anything, but when Mrs. Babcock and Mr. Wilson gang up, I feel that now I'd better, since they've stomped on me in this Convention. I don't—I would—I can't add anything to what Mr. Drum and Mr. Toole and others and Mr. Loendorf have said very well on this thing. I would like to add this proposition. I think something like this would be very popular. I'm one of the idealists, like Mrs. Bowman, who opposes earmarking on principle. I've said things against earmarking and written things against earmarking for many years. I'm willing to go with the majority proposal, however, and I'd like to add this. I think doing what we're doing here would be very popular, because one of the most open issues in District 11 was the question of earmarking revenues, particularly Section 1(b), and most of us—I can't speak for Fred and Mason and everybody, but I know in my own case, I was completely open. I was opposed to earmarking revenues and I was elected—a Democrat in a Republican community, a college professor in a community where there's a serious downtown problem, and I was completely open. And I just wonder if we really need an alternative, John.

CHAIRMAN GRAYBILL: All right, now the issue is Mr. Wilson's motion to strike the last sentence from Section 6 as it appears on page 12, striking out "the three-fifths vote of the Legislative Assembly".
Mr. Barnard.

DELEGATE BARNARD: Mr. President, I would like to withdraw my proposed amendment and speak in favor of Delegate Wilson's proposal, as they are almost—I think they are identical. I'd just like to say, if you want to cut the highway program in half in the next four years, why, just leave this section in.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Thank you, Mr. President. I've been sitting back here waiting for some of these more loquacious people to say what I was going to say, but—and they have said most of it. However, I'm rising in support of Mr. Wilson's motion. I believe that we have such a vast amount of highway system yet to build and improve in Montana; well, it's unbelievable how long it's going to take, how many years before we will have it completed so we have safe roads that Mr. Furlong was talking about—or Mr. Aasheim, excuse me; I'm sorry. And I believe that therein lies our largest safety, these dual highways. There's no question in my mind they save an awful lot of lives, and we're a long ways from it. And if we remove, or get control of these funds so we can divert them into something else—there's a choice apple over there every once in awhile—we're a little low on funds in the Legislature—I'm afraid they'll reach over there quite easily and reduce the highway funds. Now, if they do this, it might get to be a habit and it will be crippling, and therefore we'll have a lot of equipment lying idle, perhaps, and people out of work that were expecting to work. I'm very much in favor of Mr. Wilson's motion.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Mr. President, could I ask Mr. Furlong a question, please?

CHAIRMAN GRAYBILL: Mr. Furlong?

DELEGATE FURLONG: You can ask it, yes.

DELEGATE MAHONEY: Mr. Furlong, could you give me the net loss in revenue that this will take out of the present program—not anything about costs or anything, but the net loss that you're taking out. I understand you're taking out the use—the new car thing. Is that coming right—is that right, that's coming out?

DELEGATE FURLONG: That's right.

DELEGATE MAHONEY: Would you have any idea how much that is?

DELEGATE FURLONG: Yes. For last year, $1,192,043.

DELEGATE MAHONEY: Okay, thank you. Mr. President, might I speak now?
Mr. President.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: One million, a hundred and ninety-two thousand dollars. That is approximately 10 million—it's very close to 11 million—that's going out for interstate system at 1 to 10. This is 1 to 10. This is what you're taking out in interstate system. Now how much is—I don't know how much maintenance is. You're already diverting. This body right now is starting in to take away from the highway funds of the State of Montana from the Highway Department. This you're doing, because this is the start of taking away highway funds out of the Highway Department. It's right in this particular start of the amendment. Now, I hear this Highway Department being criticized, and nobody ever criticized them worse than I did. Now, I'm going to get it straight on this floor; I voted for one of the few in the Senate when this highway diversion amendment was placed before the voters. I voted No, but I'm coming to the point that I'm starting to wonder what will happen if we don't tie gasoline and some of this other stuff down. I have watched from no cigarette tax at all when I first came to the Legislature; finally it was 2 cents and look at it now. We're financing buildings, we're financing everything that we have got—what?—soldiers' bonus and that. We're using all this. Now, are we going to do this with gasoline? Are we now going to find this one easy thing sitting out here that people have to have and say we will now take so much to the General Fund, so much for schools, so much for welfare? This becomes the problem that's facing me in this issue. As late as a week before the general election, I was in the Highway Department, and I flatfootedly at that time came out and says, "I'm opposed—I'm for leaving it the way—not the way it is, but the old way." I have, though, changed, and I have watched the defeat of the sales tax. Here now is a new tax we can grab and take on motor fuels. This is why that I watch; right here in this own body, we are now taking away over a million dollars. It's coming out of that fund because it's going to be lost that we have now in there if this passes. And I hope that this Convention will realize that—the pressure that will be on the Legislature. Now, in answer over here—and I got a bang out of Mr. Drum's statement to the distinguished Senator—gentleman from Custer County. If they're all going to do what you wanted down there, we will have nothing in the state. The interstate system will stop dead. If we're going to build that road—and I'm for it; I know the one you're talking about from Carter County over there, down south to get you—the below. You have the—I'm going to say this, that the Highway Department can be controlled by the Legislature the first day the Legislature decides to do it.

There's nothing that says in here—they're now under a line appropriation. They have put them under—and I fought for years and couldn't get it, but they now have got it. Secondly, I think that with the Governor, maybe, in the highway in there, we could do a lot of things. They're not the big things. This is being done by the permission of the Legislature, just because they got the funds they're being appropriated. I'll regard, I imagine, that Mr. Chittim did say that you couldn't take out. I still think you can. I think the Legislature made a very wise move when they did take out and says the Highway Patrol is part of the highway system and policing it is a necessary job. I see nothing wrong with that. Now, I think that—I question, if we can't pass the Wilson amendment, how would you suggest to go to three-fourths of the Senate, and—or three-fourths of the body—or two-thirds? You have dropped this down to this unicameral legislature—it will take 60. If it is bicameral at the 150, it will take considerably more. But the present time, a two-thirds vote. You come down to three-fifths; you're making it that much easier. I hope that this body—already today we're starting to divert funds away from highways going into someplace else, and I am sure every one of you sitting in here wants roads for your county or your city. Not a one of you wants it, and if you think you can come in to the Legislature and get it easier that way than you can now when we've got it tied down, watch out, because you're going to be facing, as Mr. Toole says, mass transit. We're going to find a number of other things that we're going to be done, and the highways are going to suffer. I just want the public to know it.

CHAIRMAN GRAYBILL: Mrs. Blend.

DELEGATE BLEND: Mr. Chairman, will Mrs. Babcock yield to a question, please?

CHAIRMAN GRAYBILL: Mrs. Babcock?

DELEGATE BABCOCK: I quake in my shoes. Just remember, I'm just an old housewife.

DELEGATE BLEND: Well, woman to woman (Laughter) Betty, the organizations that you mentioned as being opposed, are they specifically in opposition to the three-fifths amendment?

DELEGATE BABCOCK: They would prefer to have the legislation remain the way it is in the present Constitution.

DELEGATE BLEND: Thank you. Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Blend.

DELEGATE BLEND: I, too, recently have received letters from the organizations which Mrs. Babcock has mentioned. The content of that letter revealed to me—or those letters, revealed to me that they were in opposition to having the antidiversionary clause removed in its entirety. I feel rather sure that if they knew the content of this. that they would not be so 100 percent in opposition. Thank you.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Mr. President, would Mr. Drum yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Drum?

DELEGATE DRUM: Mr. Johnson.

DELEGATE JOHNSON: Dave, have you folks considered in your deliberations that, with the Legislature being able to reach over in the Highway Department with some control and perhaps divert some of these funds, that if there weren't enough there to maybe carry on what the Highway Department was doing at the moment, they might raise the tax on gasoline?

DELEGATE DRUM: Torrey, I—Mr. Johnson—Mr. Chairman. Mr. Johnson, the problem which may arise as a result of the circumstances you describe may be the will of the people. It certainly would be the will of the Legislature if they wanted to react in that way. I couldn't say it would not happen, but as a committee we were confident that the Highway Department would be responsive to the Legislature and the Legislature was going to be responsive to the people in building as many good roads and highways as we can. And it—we didn't feel it was a threat at all that the roads were going to diminish in any way. We thought we were improving the chance of having better roads and highways in the State of Montana, and we are not legislating the money out of the Highway Department. We feel that is up to the Legislature, to take that action at the appropriate time if it ever is needed.

DELEGATE JOHNSON: Thank you. Mr. President.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: I'd just like to point out to the people here—won't it be a dandy merry-go-round? The Legislature needs some money, just raise the sales tax on gasoline, divert it into the highway fund, reach in there and pick it out. Gee, a dandy way to raise taxes.

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, it is very evident to everybody that all of these funds come from the uses of roads and highways. And I have a little more confidence in the committee than I do the next session of the Legislature in the belief that they might divert it out to some other source; but the committee did broaden, according to Mr. Drum, the ability of the funds to be used for secondary roads and that sort of thing—some of the needs that I see more in eastern Montana. So, therefore, I sure rise in support of Mr. Wilson's motion to remove that clause that permits the Legislature to make any further diversion. I don't think it needs to be diverted any further than for use on roads and streets, that sort of thing. Thank you.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: Thank you, Mr. Chairman. I think one of the issues here is not whether the Legislature—how they're going to appropriate this money, but what kind of an organization do we have in the Highway Department and exactly how insensitive are they to the needs of the people? After all, this is not their money, it is our money—both the federal part of it and the state part of it. It is our money, and people don't seem to look at it that way. I'd like to cite one instance that I've followed for a number of years. Now, I'm going to talk about Missoula, because I come [from] there. I assure you that I think that this is wrong in principle. It isn't because it's my town, but I do know about it because I've followed it and worried over it for a long time. Now, yesterday, I found out from Mr. Simpkin of the budget analysis from the Highway Department, and I quote: "Each fiscal year highway divisions submit budgets. The board allocates funds on its subjective judgment as to need and cost effectiveness." Now, I submit that subjective judgment for the use of the people's money is a political dingbat; that is, it is not responsible or responsive to the governance of our money, both state and federal. The Legislature must be able, I feel, to insist on efficiency and to protect the people's interests with fairness and responsiveness to their needs. Now, about this situation. We have in Missoula—the freeway goes through, but on the north-south route, which is the Mexican-Alaskan highway—of this, I'm fairly sure—when it is finished—there is an interchange to connect up. We now have people living on the south side. They can't get to work on the north side over the river because there are not enough bridges. This would alleviate this situation considerably. We have people tied up in traffic every morning and every evening for ½ hour. This has been going on for years. Also, all the traffic that comes in from, say, Spokane or Helena, Billings, Butte, has to go right through town. There is no way to circle this traffic around. And also, I might add, we are the fastest—Missoula is the fastest growing community in the state. Now, I've gone to meetings after meetings. The Highway Department has these meetings; they have to do it by federal mandate. People stand up and are desperate about trying to finish this road because of our situation and all that happens, they listen nicely and then they send you back a very expensive booklet about what you've said and what everybody else has said, and absolutely nothing is done. I might add I've gone and talked to Mr. Chittim, and it didn't get anywhere. I talked to Mr. Olson; and it was 11 o'clock at night and all he kept saying was, "Well, I'm interested in rural roads." And I said, "But I'm talking about a problem that is here in Western Montana. This is your area." And he just kept saying over and over again, "Well, I'm just interested in rural roads;" and I said, "Well, I'm interested in rural roads, too, but here you are—you've got a problem." No answer. I've also talked to the people in Mansfield's office to such an extent that the other day, Peggy DeMichele even sent me a whole—an article about how things are coming on with the highway trust fund. I've even talked to Teddy Kennedy when he came to Missoula and said, "What are we going to do about the federal highway trust fund? It's just great to have this money, but I happen to live in a town where absolutely nothing has been done, and we can't do anything. We go to everybody. We get no answer whatsoever." And then, I'd like to finish up with this. Our delegation came to the Legislature last time—and this is really the point of what I'm trying to say. They found out—it had just come out, what is called the federal highway users tax; 90 percent of the construction cost of any highway would have been covered under these three conditions, all of which Missoula met, by the way: a community under 50,000 where economic development was needed and it had to be tied into recreational development. And we had that in Snow Bowl and we have it in the California and Texas traffic up to Glacier National Park. Our delegation went to the Highway Department at least four times to try and talk about this. Now, this is the kind of thing that I don't like as a citizen, is that our delegation could not get any responsiveness out of the Highway Department. Mr. Chittim agreed that Missoula would meet these federal standards. Now, this was a new federal bill, but there had been a prior agreement with the Big Sky Country—with the Big Sky development. Now, this was a road that was due to be built, going where no people were yet. We have been sitting on this problem for about 10 years now, asking and asking and asking for some help. I might also say that one of the things I think that is a real problem—and you will all laugh, but I think this is true—excuse me, Betty—but Missoula, for the past 30 years, has never voted for a Governor. Some people think they're stupid, some people think they're smart; but they haven't. Consequently, they have never had a Highway Commissioner. So we're stuck. I don't think it's right for the fastest-growing community to have this kind of problems when we're building roads going off nowhere. There is no way for that—for us to get any action whatsoever out of the Highway Department. We're stuck. I don't like to be stuck, and I wouldn't like it if I lived in Ekalaka or Glendive or anywhere. I think it's just unfair. And then, when they went to Mr. Chittim—when the Legislators went to Mr. Chittim—and I quote from one of our legislators: "We got the impression that Chittim's hands were tied. By whom, we didn't know." And I don't think that's democratic, I don't think it's fair, and I submit it is our money and there's something wrong with the whole system. Thank you.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. Everyone knows that the gas tax raises the money, that it's the cow that gives the milk. We all know that, over the years, we've had to go to the people to get this gas tax enacted. Some years ago, the people became incensed because the bureaucracy without ears could not hear their pleading, so they thought, "Well, we'll take care of this by not using—not permitting the use of this gas tax money for anything excepting roads," and that was father to the antidiversionary amendment, and the people voted that. I rarely feel like going against the mandate of the people when they express themselves in a vote in a referendum and do it emphatically. I hestitate to go against their will, and I feel that way about this matter. But we are really diverting when we use gas tax money for driver's education, and I think that's good. We're diverting when we use the money for tourist promotion, and I think that's good. We're diverting when we use it to pay the salaries of the Highway Patrol, and I think that's good. I was loathe to vote for this Section 6 because of the final paragraph, which is the subject of the amendment which we're now discussing. But, like Mrs. Bugbee, if we're going to be legislating in the Constitution as we are, I have a Little Orphan Annie over in western Montana—the Skalkaho road. It was built in 1923 and 1924. It's the only highway in—primary highway in Montana that has no—is not given any consideration whatsoever by the Highway Department. Legislators from Bitterroot, Missoula, Granite County, Silver Bow and Deer Lodge County have gone to—come over here to Helena to meet with the Highway Department. They are going to meet with them again on the 7th of this month. We get nowhere. The bureaucracy has no ears. The people plead, and they get no hearing. So in spite of my feeling that the people of the state voted this antidiversionary amendment, in spite of the fact that I don't like this final sentence which is under discussion at this time, I think that for once, Romney must be practical. And I think that I will vote for the possibility of getting the three-fifths into action in the next Legislature.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: I certainly appreciate all the delegates' comments today, because I was completely at a loss on this and I'm afraid I would have made a grievous error and would have pushed the button right along with the rest of them. But it seems to me that Mrs. Bugbee and others have really helped me decide how to vote, because it looks like it's been very clearly stated: we're going to punish the people for not building the roads the way we want them built, so we're going to take the money away from them. And we haven't got our road yet from Dillon to Helena and all the way through Beaverhead County. And it's quite obvious now that if they don't take the road that you want built that's got the biggest number of votes, we'll vote them out. So it looks like the only way we'll get our road is to take the three-fifths out. That's the psychology and that's the good system of good constitutional government you people have been studying. It really amazes me that we are now going to tell the Legislature, "If I don't get my road across the way in Missoula, we're going to vote out all the money and we're going to put it in education or welfare." I'm going to support the amendment to take out the two-fifths, and if it comes up again, I'll put back in the original one.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: There is only one—there is only room for one government in Montana.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: Mr. President, like many others here in this body, I've listened with considerable interest on this debate, and I must confess that I started out by being in favor of Section 6. I have now changed my mind in line of what I've heard here. I would like to point out that Section 1(b) in the Constitution and Section 6 as proposed are different. They are different in that Section 6, as proposed, expands the uses for which this money can be spent, and they include county, city and town obligations on streets, roads and bridges. Now, here is a vast area for improvement. Not too many years ago, the cities were very hard-pressed for funds to finance their maintenance and repair their city streets, and the State Legislature, recognizing that need, passed a tax—I believe it was on liquor. Some of you may know about that. I think that's what it was for. Now, I submit that if these funds can now come from the highway fund, here is a large sum of money now coming from the liquor tax which can be used for these other purposes which the Legislature might want to use. Secondly, the fact that they have expanded the uses for which this fund can be used, which seems to me would be a long, long time before this fund would ever reach the point where there would be a surplus. There's the city streets of Shelby, perhaps, that Mr. Aronow spoke about. They could be paved from the highway fund—probably not get a very high priority; admittedly, the county roads would come first. But it seems to me that we're looking so far into the future where there might be a surplus here as to make the thing unrealistic, especially in view of the fact that by putting in this two-fifths vote that the fund could be tapped makes it a very real possibility that the fund would be diverted long before this surplus ever arose. And, finally, I'd like to call to the attention of the body to the fact that the expansion that's already been made by the proponents of this measure have reduced the amount coming into the fund by, I believe, $7 million. So this, again, postpones further the possibility of there ever being a surplus in this fund. Now, as I understand the purpose of this three-fifths vote, it was just for that purpose and that purpose alone. It was to look forward to the day when there might be a surplus in the highway fund and then at that time it could be used for other purposes. And I submit for your consideration that this is a long, long time in the future if they're going to start using it for city streets, if they are going to start using it for all the small roads in the state that have not yet been serviced.

CHAIRMAN GRAYBILL: Now, ladies and gentlemen, the issue is on Mr. Wilson's motion to strike the last sentence out of subsection—out of Section 6. And we've had a lot of debate and you certainly may continue to talk about it, but the Chair will expect you increasingly to stay on the subject of whether or not to delete the last sentence, because I think we've had lots of discussion and we'll still have time to discuss the section again one way or the other, but let's try and decide that issue. Is there further discussion on that issue?

Mr. Simon.

DELEGATE SIMON: Mr. Chairman, I have been seated here in a very comfortable chair and I envy all of you, but I am going to rise out of that chair and support the deletion and support Mr. Wilson on the deletion. We have been 16 years with this enactment of the law, and I see that your Helena streets are in fine condition, but we would not like to have you divert much of this money before we get some in Billings, the largest city in the State of Montana. I went down your street the other day—right down this street down here on your four-lane highway and I thought I was back in Billings. There was water running over the road about 6 or 8 inches deep, and they had a sign on the road, "water". It was a lake. (Laughter) I always enjoy going down to Betty Babcock's place. We have worse streets in Billings, but I don't know where. So I would like to support his motion, because I don't think we're in any position at this time, under any circumstances, after 16 years, to talk about diverting funds. I think 25 years from now we can talk about it, and the people will tell us when they want it done. To divert funds from this for any reason, today, of any kind seems to me that we are doing the thing that the people wanted us—didn't—won't want us to do because [of] what they enacted by referendum 16 years ago in 1956—I guess that's how long ago it is. It seems to me that when you take the attitude that you can divert funds before you have them by a three-fifths majority—and anything I don't like on the highway is fifths, that's for sure; I'd rather make it a full quart because fifths on the highway do not belong in any constitution. I would heartily support the deletion of the last paragraph.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman, I'm sure that everyone in this group can think of a road or a city street that needs improvement, but I'm just wondering—and I would like to ask Mr. Drum to yield to a question, Mr. President.

CHAIRMAN GRAYBILL: Mr. Drum?

DELEGATE DRUM: Mrs. Bates.

DELEGATE BATES: What—Mr. Drum, what is being done in this article for other earmarked funds, and will they be used to the intent and purpose they were intended?

DELEGATE DRUM: The only other semblance of an earmark would be in the agricultural, which was Section 15, which has been—was duplicated exactly in the article we passed yesterday and so, as I understand it, it will not be in the finance article. But that's an earmarking of those who have cattle or wheat and who levy a tax upon themselves for the service to their own industry.

DELEGATE BATES: Okay. Thank you.

DELEGATE DRUM: Did I answer your question, Mrs. Bates?

DELEGATE BATES: Yes, thank you. Mr. President, I would also like to ask Mr. Mahoney to yield to a question.

CHAIRMAN GRAYBILL: Mr. Mahoney?

DELEGATE MAHONEY: I'll try.

DELEGATE BATES: Mr. Mahoney, you mentioned that the Legislature can now control the highway fund, and if this is so, then why is there any need for Section 6 in this article?

DELEGATE MAHONEY: The Legislature can control the fund. They have it and they're appropriating. They have a line appropriation being made to this department over there now. They can control it. Now, as highway 6—it would be awful if you didn't have 1(b) or something. Now, this is it; but there's plenty of ample protection. The highway is appropriating these funds. No question about it.

DELEGATE BATES: Okay, thank you. Mr. President.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: I would like to have a substitute motion that we delete this entire section. I don't really see the need for it. Thank you.

CHAIRMAN GRAYBILL: We voted on that once, Mrs. Bates. No, I guess we didn't. We voted on deleting it and putting in 1(b). You are going to make a substitute motion to delete Section 6 in its entirety?

DELEGATE BATES: Yes.

CHAIRMAN GRAYBILL: Mrs. Bates has made a motion to delete Section 6 in its entirety. Is there further discussion? Will those in the back who are not members of the delegation sit down or do something so I can tell who's standing up back there? Please sit down if you're not a delegate.
Mr. Foster.

DELEGATE FOSTER: Mr. President, fellow delegates. I realize the hour is getting late and we're all getting tired, but there are a few points that I would like to get cleared up. Would Chairman Delegate Rygg answer two questions?

CHAIRMAN GRAYBILL: Mr. Rygg?

DELEGATE RYGG: All right.

DELEGATE FOSTER: Chairman Rygg, in your opening remarks concerning the need for this section, you indicated that you felt that it was a compromise. And could you amplify a little bit as to why you felt there was the need for this compromise, in view of the fact that, really, I think in this debate here that has gone on a long period of time, at least to my satisfaction, no one has said—has substantiated, really, the need for the anti-diversion amendment? Could you amplify on that a little bit?

DELEGATE RYGG: I think I said that there—I thought there were three factions: one who did not want it at all; one who wanted to retain 1(b) as it was; and the third group, which I considered the committee's feeling, was more or less a compromise, yes. And by the compromise I am meaning that we had taken some of the revenue from it and we have added some of the expenses to it, and we had also put in a three-fifths hammer over the head of the Highway Department, if you want to call it that. That is why I thought it was a compromise.

DELEGATE FOSTER: Do you still feel that, after the debate today, that there is as much need for having this compromise, as you felt before the debate?

DELEGATE RYGG: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Yes, I think so. I think I feel about the same.

DELEGATE FOSTER: Thank you. Mr. President, fellow delegates, I would like to answer just a few questions that have been raised in the course of the debate. I happen to be one of those—quote, unquote—"idealists", and I personally have not been completely convinced that there is any need for the antidiversion amendment. I realize the importance of the Legislature handling tax money and revenue moneys and I also realize that the Legislature has a great deal of power in handling these moneys. I think you will all recall that, with a simple majority vote of the Legislature, that they, in fact, can remove the tax-exempt status of education property and religious property, et cetera. So I personally don't see that really, we need to give special consideration to the Highway Department. I think that they are very well taken care of in the statutes. And, in fact, I think that's where this whole problem should be put. I'll quote from the statutes, of which there are approximately 30 pages which cover this type of funding: 84-1840 says, "All taxes, interest and penalties collected under this act shall be turned over promptly to the State Treasurer and the State Treasurer shall place the same in the earmarked revenue fund to the credit of the State Highway Department." So I think Mr. Mahoney's point of the money being immediately diverted are a little bit ill-founded. It is presently earmarked and would remain so if we removed this section from the Constitution, and, in fact, what would happen then would be instead of having to have a 60 percent vote, as the present section in the majority report requires, it would simply be a 50 percent vote, the same as all other forms of taxation. I won't belabor the point to any great extent, but I will call your attention to a few of the supporters of the antidiversion amendment and a few things that they have said. I have here a letter from the Montana Highway Users Federation, and at the very bottom, it says: "Let's oppose giving any future Legislature an opportunity to divert these funds." I submit that we should not be tying up the Legislature unduly, and, in fact, I think to delete this whole section would be the logical approach to that. I also quote from a statement by Del Siewert, who was speaking in support of the antidiversion amendment, and he states: "The Constitutional Convention must look at the financing of state government from the practical aspects"—excuse me—"Earmarking is a horrible theory but a very practical method of financing. Our position supports the retention of the antidiversion amendment"; Del Siewert, Executive Secretary, Montana Chamber of Commerce, in the *Montana Motorist* magazine. I submit that this concept—if it is such a horrible thing, that maybe we ought to at least take a vote on it in this Convention, and in so stating, I support the position of Delegate Bates. I don't want to give anyone the idea that the committee proposal is in any way unsatisfactory to me, because I think they've done an outstanding job and I could, in fact, be very happy to live with their proposal if, in fact, the present motion does not succeed. But I do think that it is important that we have a vote on this and that we, in fact, have the opportunity to express whether we want to retain anything at all in the Constitution in special interest to the Highway Department. Thank you very much for your time.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Mr. President. I resist the motion to delete. I think the section is a good section in the Constitution and especially as it is now written in Section 6. Now, Section 6 is quite logical. What we've taken out of Section 6, basically, as to money that is no longer earmarked but the Legislature can divert it to the highway if they want to, is the new car sales tax; and the new car sales tax is actually a replacement of the property tax on a new car for the first year. That's what we've taken out. Now, that's logical as to whether or not that should be used for highway purposes. Secondly, what we've added to the section is those things that we do feel are related to the proper expenditure of gasoline taxes for highway purposes. We've just enlarged what we've spent. We haven't went and took another type of an expenditure which would devote it entirely from something different associated with highways. And that was our logic in these two changes—to make it more equitable. And I and the committee feels that an antidiversion amendment is needed in the Constitution with the last sentence on it. Thank you.

CHAIRMAN GRAYBILL: Mr. Artz, you were up next.

DELEGATE ARTZ: Mr. Chairman, I just want to reiterate with facts what Delegate Mahoney said. On November 6, 1956, the antidiversion amendment was passed 160,533 to 47,615 votes, and I think it would be very unwise to antagonize a hundred and sixty thousand people. Thank you.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Mr. Chairman, I might start out by saying—replying to Delegate Artz—that 1956 was quite some time ago now. Attitudes have changed and are changing rapidly, and I'm not as frightened by those statistics as many people are. In reply to Mr. Foster and Mrs. Bates, I would say I, too, came here as an idealist and philosophically I support your proposal to delete Section 6, but as a practical matter it just can't be done. This matter must be compromised. I'm surprised that Mrs. Babcock didn't name all of the pressure groups that are involved in this, because I have a much longer list than she does. This is probably the most powerful coalition of pressure groups ever gathered together in the State of Montana. I think we must compromise. I think the committee has compromised and, before the end of the day, after this debate has reached some sort of conclusion, we may compromise further in the form of an alternative on the ballot, but compromise we must.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: I rise in opposition, too, to the Bates amendment and in favor of Delegate Wilson. I never thought the day would come when I would be a supporter of the Highway Department, because I've had lots of troubles with them, too. But nevertheless what we're talking about here, this great need for earmarking, is just because of a human weakness. When you're just desperate for funds to balance a budget at any level of government, you're just going to have to dip into anything you want. And the reason we have to earmark funds for the highway is simply to assure that matching funds will be available. And everybody in Montana brags about all the federal money we have pouring back here into the state; if you don't earmark these funds, you're not going to have money coming back to the state. And I think, also, we lose sight sometimes of the fact that people look very enviously at the federal—at the Highway Department. It isn't because of the funds they raise locally, it's because of these vast millions of federal dollars. And you are never going to let the Legislature be in any position to manage or take care of that money, and I think sometimes we lose sight of that. Thank you, Mr. President.

CHAIRMAN GRAYBILL: All right, now—the issue arises on Mrs. Bates' motion to delete Section 6 in its entirety.

DELEGATE FOSTER: Roll call vote.

CHAIRMAN GRAYBILL: You want a roll call vote? Very well, there's plenty of seconds. Mrs. Bates has made a motion that Section 6, as proposed by the Revenue and Finance Committee, be deleted in its entirety. So many as shall be in favor of her motion to delete, vote Aye; and so many as shall be opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the ballot.

Aasheim	Nay
Anderson, J.	Nay
Anderson, O.	Absent
Arbanas	Absent
Arness	Excused
Aronow	Nay
Artz	Nay
Ask	Nay
Babcock	Nay
Barnard	Nay
Bates	Aye
Belcher	Absent
Berg	Nay
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Nay
Brazier	Nay
Brown	Nay
Bugbee	Nay
Burkhardt	Nay

Cain	Nay
Campbell	Aye
Cate	Aye
Champoux	Nay
Choate	Nay
Conover	Nay
Cross	Nay
Dahood	Absent
Davis	Nay
Delaney	Nay
Driscoll	Nay
Drum	Nay
Eck	Aye
Erdmann	Nay
Eskildsen	Absent
Etchart	Nay
Felt	Absent
Foster	Aye
Furlong	Nay
Garlington	Nay
Gysler	Nay
Habedank	Absent
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Nay
Harlow	Nay
Harper	Nay
Harrington	Aye
Heliker	Nay
Holland	Excused
Jacobsen	Nay
James	Nay
Johnson	Absent
Joyce	Nay
Kamhoot	Nay
Kelleher	Aye
Leuthold	Nay
Loendorf	Aye
Lorello	Nay
Mahoney	Nay
Mansfield	Nay
Martin	Nay
McCarvel	Nay
McKeon	Aye
McDonough	Nay
McNeil	Aye
Melvin	Nay
Monroe	Aye
Murray	Aye
Noble	Nay
Nutting	Nay
Payne	Excused
Pemberton	Aye
Rebal	Nay
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Nay
Romney	Nay
Rygg	Nay
Scanlin	Absent
Schiltz	Nay
Siderius	Nay
Simon	Nay
Skari	Nay
Sparks	Nay
Speer	Aye
Studer	Nay
Sullivan	Nay
Swanberg	Nay
Toole	Nay
Van Buskirk	Nay
Vermillion	Aye
Wagner	Nay
Ward	Nay
Warden	Nay
Wilson	Nay
Woodmansey	Nay
Mr. Chairman	Nay

CLERK SMITH: Mr. Chairman, 18 voting Aye, 70 voting No.

CHAIRMAN GRAYBILL: 70 having voted No and only 18 Aye, Mrs. Bates' substitute motion is defeated. We're back on Mr. Wilson's amendment to strike the last sentence of Section 6. Is there further discussion?

Mrs. Bates, for what purpose do you arise?

DELEGATE BATES: I would like to say why I voted the way I did and why I asked to strike that. I was hoping—

CHAIRMAN GRAYBILL: All right, you may explain your vote.

DELEGATE BATES: I was hoping the other amendment then could come on the floor, wherever it has come from—

CHAIRMAN GRAYBILL: Very well.

DELEGATE BATES: —because I like it.

CHAIRMAN GRAYBILL: Mr. Wilson, you may close.

DELEGATE WILSON: Thank you, Mr. President. I'll make my remarks very brief, because we're getting tired sitting here. I'd like to call your attention that the last sentence previous to the one that I wish to strike does say that—"collection costs as authorized by the Legislative Assembly". So the Legislative Assembly will have some control over this highway body, and this is the thing that I am very hopeful that they will exercise their option in. And, as Mr. Mahoney has pointed out to you people that the Legislature, if they will exercise their prerogative, does and can have control of the Highway Department. Therefore I ask to [sic] support for deletion of the last sentence, and I ask for a roll call vote.

CHAIRMAN GRAYBILL: Very well, as many as shall be in favor of Mr. Wilson's motion to delete the last sentence of Section 6, being the three-fifths vote provision, indicate by voting Aye; and so many as shall be opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Do any delegates wish to change their vote?

(No response)

CHAIRMAN GRAYBILL: Please take the ballot.

Aasheim	Aye
Anderson, J.	Aye
Anderson, O.	Absent
Arbanas	Absent
Arness	Excused
Aronow	Aye
Artz	Nay
Ask	Nay
Babcock	Aye
Barnard	Aye
Bates	Nay
Belcher	Absent
Berg	Nay
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Nay
Brazier	Nay
Brown	Nay
Bugbee	Nay
Burkhardt	Nay
Cain	Nay
Campbell	Nay
Cate	Nay
Champoux	Nay
Choate	Aye
Conover	Nay
Cross	Nay
Dahood	Absent
Davis	Aye
Delaney	Aye
Driscoll	Nay
Drum	Nay
Eck	Nay
Erdmann	Aye
Eskildsen	Aye
Etchart	Aye
Felt	Absent
Foster	Nay
Furlong	Nay
Garlington	Nay
Gysler	Nay
Habedank	Absent
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Nay
Harlow	Nay
Harper	Nay
Harrington	Nay
Heliker	Nay
Holland	Excused
Jacobsen	Aye
James	Nay
Johnson	Aye
Joyce	Nay
Kamhoot	Aye
Kelleher	Nay
Leuthold	Aye
Loendorf	Nay
Lorello	Nay
Mahoney	Aye
Mansfield	Nay
Martin	Nay
McCarvel	Aye
McDonough	Nay
McKeon	Nay
McNeil	Nay
Melvin	Nay
Monroe	Nay
Murray	Nay
Noble	Aye
Nutting	Aye
Payne	Excused
Pemberton	Aye
Rebal	Nay
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	Nay
Rygg	Nay
Scanlin	Absent
Schiltz	Nay
Siderius	Nay

Simon	Aye
Skari	Nay
Sparks	Nay
Speer	Nay
Studer	Aye
Sullivan	Nay
Swanberg	Aye
Toole	Nay
Van Buskirk	Absent
Vermillion	Nay
Wagner	Nay
Ward	Aye
Warden	Nay
Wilson	Aye
Woodmansey	Nay
Mr. President	Nay

CLERK HANSON: Mr. Chairman, 27 delegates voting Aye, 62 voting No.

CHAIRMAN GRAYBILL: 62 delegates having voted No and 27 Aye, Mr. Wilson's amendment is defeated.

Mr. McNeil, did you want to make an amendment?

DELEGATE McNEIL: Mr. Chairman. I move to amend Section 6, page 12 at line 13, by adding, after the word "members", the following three words—quote: "present and voting"—close quote.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: I think the intent of the motion is obvious. If a majority of this Convention wants the Legislature to be able to have this vote, I think it ought not to be—the intent of it ought not to be defeated by absenteeism. I close.

CHAIRMAN GRAYBILL: Mr. McNeil has proposed an amendment to line 13 by adding, after the word "members" there, the words "present and voting". So the sentence would read: "by a three-fifths vote of the members present and voting of each house of the Legislative Assembly", et cetera. Is there discussion?

Mr. Rygg.

DELEGATE RYGG: I would like to resist that motion. I am willing to compromise all right, and I think we have a sufficient hammer there, but I think we should stay at the three-fifths of each house. I really believe this would be going a little too far the other way.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. McNeil's amendment—proposed amendment to add the words "present and voting", on line 13, so that the sentence would read: "by a three-fifths vote of the members present and voting of each house of the Legislative Assembly", et cetera. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it, and so ordered.

Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, a little while ago Delegate Mahoney was talking about this three-fifths, so I move to amend on line 13 by deleting the words "three-fifths" and in place thereof inserting the words "two-thirds". I feel that probably this should be a real good compromise between the people that want to strike it entirely and the other way. Two-thirds of the members of each house, or the one house if that's what it is, is a real tough one to get. I think it will satisfy my problems of wanting to make them a little more responsive, and I would hope the body will accept it.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President, I rise in support of increasing that number. At least we'll get two-thirds of our highway system and then, when two-thirds get their roads, they can take the money for welfare in their areas. Thank you. I support it. (Laughter)

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Mr. Chairman, I rise in opposition to the motion. I think that by indicating our desire for a three-quarters' vote, we're showing a complete distrust of the Legislature and, I think, probably effectively disallowing any control of the Legislature over the Highway Department. It's my feeling, Mr. Chairman, that three-fifths has the effect of 100—three-fourths, excuse me, has the effect of 100 percent and is totally unacceptable to the members of my committee.

CHAIRMAN GRAYBILL: Right. It's two-thirds, not three-fourths. Very well, the motion arises on—the issue arises on Mr. Gysler's motion to change the number "three-fifths" to "two-thirds" in line 13 on the committee report.

DELEGATE ROD HANSON: Roll call vote.

CHAIRMAN GRAYBILL: A roll call vote having been called for, all those who are in favor of changing "three-fifths" to "two-thirds", which has the effect of raising it, please vote Aye; and those that oppose it, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please tally the vote.

Aasheim	Aye
Anderson, J.	Aye
Anderson, O.	Absent
Arbanas	Absent
Arness	Excused
Aronow	Aye
Artz	Aye
Ask	Aye
Babcock	Aye
Barnard	Aye
Bates	Aye
Belcher	Absent
Berg	Aye
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Nay
Brazier	Aye
Brown	Nay
Bugbee	Nay
Cain	Aye
Campbell	Nay
Cate	Nay
Champoux	Nay
Choate	Aye
Conover	Nay
Cross	Nay
Dahood	Absent
Davis	Aye
Delaney	Aye
Driscoll	Nay
Drum	Nay
Eck	Nay
Erdmann	Aye
Eskildsen	Aye
Etchart	Aye
Felt	Absent
Foster	Nay
Furlong	Nay
Garlington	Nay
Gysler	Aye
Habedank	Absent
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Nay
Harlow	Nay
Harper	Nay
Harrington	Nay
Heliker	Nay
Holland	Excused
Jacobsen	Aye
James	Nay
Johnson	Aye
Joyce	Nay
Kamhoot	Aye
Kelleher	Nay
Leuthold	Aye
Loendorf	Nay
Lorello	Nay
Mahoney	Aye
Mansfield	Aye
Martin	Nay
McCarvel	Nay
McDonough	Nay
McKeon	Nay
McNeil	Nay
Melvin	Aye
Monroe	Nay
Murray	Aye
Noble	Aye
Nutting	Aye
Payne	Excused
Pemberton	Aye
Rebal	Nay
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	Nay
Rygg	Nay
Scanlin	Absent
Schiltz	Nay
Siderius	Nay
Simon	Aye
Skari	Aye
Sparks	Nay
Speer	Nay
Studer	Aye
Sullivan	Nay

Swanberg	Aye
Toole	Nay
Van Buskirk	Absent
Vermillion	Nay
Wagner	Aye
Ward	Aye
Warden	Nay
Wilson	Aye
Woodmansey	Nay
Mr. Chairman	Nay

CLERK HANSON: Mr. Chairman, 38 delegates voting Aye, 51 voting No.

CHAIRMAN GRAYBILL: 38 delegates having voted Aye and 51 voting No, Mr. Gysler's amendment is defeated.

Mr. Heliker, are you up?

DELEGATE HELIKER: Mr. Chairman, will Delegate Rygg yield to a question?

CHAIRMAN GRAYBILL: Mr. Rygg?

DELEGATE RYGG: I'll yield.

DELEGATE HELIKER: Mr. Rygg, before I make it as a motion, I'd like to inquire of you your reaction to the possibility of inserting, on line 16 on page 12, before the last word of the sentence, between "other" and "purposes", the word "related".

DELEGATE RYGG: I'm sorry. Line 10 on page 12, did you say?

DELEGATE HELIKER: So that it would read, "other related purposes".

CHAIRMAN GRAYBILL: The last sentence—the last line, Mr. Rygg, on page 16—line 16, page 12. "Such dedicated funds may be appropriated for other related purposes."

DELEGATE RYGG: I don't really know what you mean, but I think I'd probably oppose it. (Laughter)

DELEGATE HELIKER: Well, maybe I should explain what I mean. Mr. Chairman, may I inquire further?

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: It's been said here that the—this sentence would give the Legislature the authority to appropriate funds originating in these sources for welfare or for education or for any purpose whatsoever. Let me ask, first of all, is that the intention?

DELEGATE RYGG: Well, the way it reads, yes, it would be strictly up to the Legislature. That's true.

DELEGATE HELIKER: All right, then. If you were to insert "related", it would confine the Legislature to appropriations for purposes related to the above-listed things. I would assume the word "related"—and I would expect the word "related"—to be broadly construed so it might be a fairly large category of things. Now, do you understand my question?

DELEGATE RYGG: Yes, I understand it. I think maybe that would be acceptable. I can't speak for the rest of the committee, however; but I think maybe that would be acceptable. I'm such a nut for going for the majority report it's pretty hard for me to deviate. That's my problem.

DELEGATE HELIKER: Well, Mr. Chairman, with that much encouragement I will make that motion, and I'd like to speak on it if I may. I, like Mr. Foster—

CHAIRMAN GRAYBILL: Wait a minute. Wait a minute. The Chair will give you the floor in a minute. That's in line 16. Very well, the Chair will accept an amendment from Mr. Heliker on line 16 of the subsection—of the Section 6, which adds the word "related" between the words "other" and "purposes" so that line 16 reads: "funds may be appropriated for other related purposes".

Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman. I, like Delegate Foster, count myself as an idealist, but one of my ideals is that I think when sales taxes of any kind, including specific sales taxes, which in this case, however, has many of the characteristics of a general sales tax because it applies to and is paid for by most of us—when such taxes are levied, they ought to be levied to provide specific benefits to those who pay them. And I think that we should not open up the possibility of the Legislature using this gasoline tax and the other related taxes as, in effect, a general sales tax to finance the general government of Montana. I would therefore like to see the use of these funds restricted to the general purposes—and this is a pretty broad area—for which they were originally passed.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I would like to observe that every potential other related purpose has already—been already recited in here and it seems to me that this amendment is totally meaningless.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman, I oppose this motion because I think it fairly effectively undoes what we have spent so much time doing; namely, keeping this section of the article in. We raise taxes from cigarettes that do not go to cigarette smokers or even to related causes. The same with alcohol. The same with property. Taxes raised on property aren't all spent on property. Or, necessarily, income doesn't bring you more income, and so forth. I don't think Mr. Heliker's line of reasoning in this case is helpful, and I suggest we stay with what we've already done at such great length.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Mr. Chairman, would Mr. Heliker yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Heliker?

DELEGATE HELIKER: I yield.

DELEGATE McKEON: Mr. Heliker, "related purposes" is rather vague. In your mind, could related purposes include pollution control—automobile pollution control?

DELEGATE HELIKER: As I said, Mr. McKeon, I would expect and it is my intention that the word "related" be broadly construed; and I think it would cover pollution control, which is related to the use of highways, and that means automobiles.

DELEGATE McKEON: Thank you, Mr. Chairman. Thank you, Mr. Heliker.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I'm sorry to have to talk again, but you see, I'll have to tell the professor I don't think very well on my feet and after I sat down so I could think again, I don't believe I could support that amendment; and I wanted to tell you that before it came to a vote. After all afternoon here, too, I've been wondering—I hear the lawyers talking about when they have interests, and so I suppose I should have mentioned at the beginning that I am a member of MADA. However, because of my action and vote here, I don't know whether I will be much longer. (Laughter)

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. Chairman. I, too, would rise to oppose Mr. Heliker's motion. I think it is confusing. I think our original intent in drawing this article was to rely on the wisdom of the legislatures—of legislators and legislatures of future years. And I feel that the inclusion of that word would weaken the intent of our original article. I oppose Mr. Heliker's motion.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. President, I'm happy to be included with Mr. Heliker as an idealist, but I certainly oppose his amendment.

CHAIRMAN GRAYBILL: Very well. The question arises on Mr. Heliker's motion to add, on line 16, the word "related" between "other" and "purposes", so that it reads: "funds may be appropriated for other related purposes".

Mr. Heliker, do you want to close or do you want a roll call vote?

DELEGATE HELIKER: I would like to close, Mr. Chairman.

CHAIRMAN GRAYBILL: Okay.

DELEGATE HELIKER: I reiterate that I think you should think closely about this in terms of what door you are opening for the enactment of what amounts to a general sales tax when the people have just resoundingly defeated same.

CHAIRMAN GRAYBILL: Very well, the question arises on Mr. Heliker's motion to add the word "related". So many as shall favor that, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as opposed, say No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's defeated. Now, it is the intention of the Chair to offer a substitute amendment, but not until we have adopted Section 6, at least in principle. Are there other amendments to Section 6? In other words, the Chair wants Section 6 and the other one. If there are no other amendments to Section 6, without moving that we adopt it finally, would someone—

Mr. Rygg, would you at least put the question on Section 6, without moving it finally?

DELEGATE RYGG: I don't know just how to do that. I'll put the question on 6 without moving it finally, if that's what you like. (Laughter)

CHAIRMAN GRAYBILL: That's one of the best ways to do it, Mr. Rygg. (Laughter)

CHAIRMAN GRAYBILL: All those in favor of Section 6 as amended, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: All right, the Ayes have it.

UNIDENTIFIED DELEGATES: It wasn't amended.

CHAIRMAN GRAYBILL: All right, as unamended then. There aren't any amendments to it.

(Delegate Aasheim assumes chairmanship of Committee of the Whole)

CHAIRMAN AASHEIM: The assembly will be in order.

Mr. Graybill.

DELEGATE GRAYBILL: Mr. Chairman, you have before me an amendment proposed by me—or an addition proposed by me, and you'll see if you read the line where it says, "Mr. Chairman. I move to add, as an alternative to Section 6, on the ballot, the following", and then I put in this paragraph that some of you have been talking about. Now, my purpose here is, I want in the Constitution the committee's proposal with the two-thirds. I want it in that way. But I do think this Convention faces a serious challenge, because we have been put on notice by a whole long list of people, including those that Mrs. Babcock read and some others, that they are going to oppose this Constitution if we put that in. And, to be quite frank about it, we've been told they're going to oppose it even if we put it in with the two-thirds—or the three-fifths in it, so we've been put on notice that they are going to oppose it. Now, you know, I don't mind that. Everybody has a right to oppose it, but it does seem to me that if they're going to oppose it, we should go with our best shot; and I think maybe our best shot might be to add another alternative for the public so that the public would have a choice of the antidiversion amendment, as amended here with the two-thirds—three-fifths proposal or a slightly broader concept and then the public could choose between them. Now, the source of Section 6, as I have proposed it here, really is originally 1(b) with some changes in it, and the main changes are that on line 3 we've used the phrase "public transportation facilities" and down below we have said that the money can be spent for public transportation facilities, the concept being simply to broaden the use from strictly highways, or even highways and streets, to public transportation facilities—the reason being that we are writing a Constitution for quite a long time. If you'll just think with me a minute, there was hardly any highway problem at all when the first Constitution was written, at least in the sense that we know it now, and I don't think any of us can honestly foresee what the transportation problem will be in, say, 50 years. So the only purpose of this is to give the public the alternative where they could vote broadly to say that they wanted funds earmarked from transportation—from any funds from any public transportation facilities to be earmarked for public transportation facilities. It broadens both the intake and the outgo. And up in the first line, where it says "derived from fees", we've added "and charges". I happen to know something about airport financing, and there's a lot of charges involved and fees involved in airport financing; this would have the effect of requiring that airport charges be spent on at least public transportation facilities. And the only purpose, really—and I don't really mind if you kill it—but the only purpose, really, is to offer an alternative to the public so that they could either vote for Section 6 with the three-fifths or vote for a section which is broadly construed, which still earmarks but earmarks only in the broad category of public transportation facilities. Now, it's just that simple; but I think that if it's useful, we ought to give both alternatives to the people and if it isn't useful, why, we'll run our chances, I guess, with what the committee came up with. That's all I have to say.

CHAIRMAN AASHEIM: Any discussion of the addition?

Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman, would Mr. Graybill yield to a question?

DELEGATE GRAYBILL: I yield.

DELEGATE JOHNSON: Leo, I—

CHAIRMAN AASHEIM: Mr. Johnson, I think we'd better read this first so we have it in the journal. Will the clerk read this addition, and then you'll have the floor.

CLERK HANSON: "Mr. Chairman. I move to add, as an alternative to Section 6, on the ballot, the following: 'Section 6. Revenue derived from fees and charges, and from fines and forfeitures relating to registration, operation or use of vehicles on public transportation facilities, and from excise or license taxes on fuels and other energy sources used for propulsion of such vehicles shall be used solely for payment of obligations incurred for the development, construction, reconstruction, repair and maintenance of public transportation facilities, a State Highway Patrol System, and tourist promotion and administration costs as authorized by the Legislative Assembly.' Signed: Graybill."

CHAIRMAN AASHEIM: Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman, Mr. Graybill.

DELEGATE GRAYBILL: Yes, Mr. Johnson.

DELEGATE JOHNSON: I'm concerned about your last line there, "as authorized by the Legislative Assembly". Would you clarify for me the—what looks to me a close relationship to the entire last sentence of Section 6, except it would be, I presume, a majority vote. Is that—am I mistaken?

DELEGATE GRAYBILL: I don't quite understand your question, Mr. Johnson.

DELEGATE JOHNSON: Well, I must illustrate, then. It looks to me like here the—on your proposal, that the Legislative Assembly would have the power to do just what this three-fifths vote of the members in each house—you see, the last sentence on the Section 6 that we were trying to delete a while ago.

DELEGATE GRAYBILL: You mean because it says that it's as authorized by the Legislative Assembly, it's the same as the three-fifths, or in fact it's a 50-50?

DELEGATE JOHNSON: Well, I was concerned about it, yes, sir.

DELEGATE GRAYBILL: I think it is. I think it's as broad as the three-fifths language, or perhaps broader.

DELEGATE JOHNSON: Thank you, sir. Thank you, Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Davis.

DELEGATE DAVIS: Mr. Chairman, will Mr. Graybill yield, please, to a question?

CHAIRMAN AASHEIM: Will you yield, Mr. Graybill?

DELEGATE GRAYBILL: Yes.

DELEGATE DAVIS: Leo, as I read this, it would seem to me that yours is just a total turning it over to the Legislature; not a compromise antidiversion that requires three-fifths, but just leaves it all right to the Legislature.

DELEGATE GRAYBILL: Well—Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Graybill, you may answer.

DELEGATE GRAYBILL: Mr. Davis—and I may have answered Mr. Johnson slightly wrong—what mine says is that it's left up to the Legislature, all right, but I think it differs from the three-fifths in that it restricts the Legislature to public transportation facilities uses. In other words, it does just what the last related amendment tried to do, in the sense that the Legislature can determine where within the field of public transportation facilities the money can be spent, but the Legislature could not take it out of public transportation facilities. Do you follow me, Mr. Johnson and Mr. Davis?

DELEGATE DAVIS: Well, I don't see where it says that they can't just spend it without diverting it. Oh, it's limited by your last sentence. I see.

DELEGATE GRAYBILL: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Graybill, you may answer.

DELEGATE GRAYBILL: I think it will allow the Legislature to divert, but only within the area of public transportation facilities, Mr. Davis.

DELEGATE DAVIS: Would Mr. Graybill yield to another question?

CHAIRMAN AASHEIM: Will you yield, Mr. Graybill?

DELEGATE GRAYBILL: I'm beginning to feel like Mrs. Bowman, but yes, I'll yield.

DELEGATE DAVIS: You have fines and forfeitures included in there. What do you have in mind, and what does this encompass?

DELEGATE GRAYBILL: Well, I'm willing to throw into the pot all fines and forfeitures which come from registration, operation or use of vehicles on public transportation facilities. In other words, traffic fines and so forth. Any fines, or any that come from the public transportation field would have to stay in the public transportation field, but it is broader than just the automobile. It's the whole public transportation field.

CHAIRMAN AASHEIM: Mr. Davis.

DELEGATE DAVIS: I'll ask him if he'll yield again.

DELEGATE GRAYBILL: Yes, sir.

DELEGATE DAVIS: I don't know how much money we're talking about; but that comes out of the school funds, don't some of these fines and forfeitures? Where do they all go? Do they all go back to the Highway?

DELEGATE GRAYBILL: You'll have to ask Mr. Furlong about that. I don't know where they come from. I'm just willing to leave them in the transportation field.

DELEGATE DAVIS: I'm—Mr. President.

CHAIRMAN AASHEIM: Mr. Davis.

DELEGATE DAVIS: I'm wondering if we're opening up another can of worms by who we're taking the fines and forfeitures away from, rather than getting some more people upset.

CHAIRMAN AASHEIM: Mr. Toole.

DELEGATE TOOLE: Mr. Chairman, under Mr. Graybill's amendment, they are getting substantial revenues back that Section 6 took away from them. Fines and forfeitures are in excess of a million dollars.

CHAIRMAN AASHEIM: Mr. Harper.

DELEGATE HARPER: Will Mr. Graybill yield to another question?

CHAIRMAN AASHEIM: Will you yield, Mr. Graybill?

DELEGATE GRAYBILL: I'll yield.

DELEGATE HARPER: Did you deliberately leave out driver education, which this body by a vote of 79 to 8 expressed an interest in keeping, or is it an oversight on your part? When you list all the different possible things that money might be used for in highway-related enterprises, you did not put in driver education, and I remind you that Mr. Aasheim made that very motion today on the majority proposal and his motion to delete driver education lost 79 to 8. Do you want us to go through that fight again, or are you willing to put it in your—

DELEGATE GRAYBILL: I'm perfectly willing to put it in, but I—the reason that it's not in there now is, at the time I drafted this, we were talking about—I drafted it, really, from another base, which did not have driver education in, but it's immaterial to me whether it's in or out.

DELEGATE HARPER: Will you add it, or shall I make a motion?

DELEGATE GRAYBILL: Well, to get the issue resolved, I'll add it. And then when—if this happens—

CHAIRMAN AASHEIM: Mr. Harper, will you make the motion so we'll get it in the record?

DELEGATE GRAYBILL: Very well, make the motion.

DELEGATE HARPER: Yes, Mr. Chairman. I move that on the next to the last line on Mr. Graybill's proposal, following the comma, following the word "system", at the beginning of the next to the last line, the words "driver education" and comma be inserted. If that's not exactly the proper place for it, Style and Drafting can care for it.

CHAIRMAN AASHEIM: Any further discussion?

Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman, will Mr. Graybill yield to a question?

CHAIRMAN AASHEIM: We are on the motion to amend now, Mr. Melvin.

DELEGATE MELVIN: Very well.

CHAIRMAN AASHEIM: We're on the motion to amend, as presented by Mr. Harper. Any more discussion on the amendment?
Mr. Wilson.

DELEGATE WILSON: Mr. President.

CHAIRMAN AASHEIM: Mr. Wilson.

DELEGATE WILSON: Speaking about the amendment, I would like to call attention to what has been left out of Section 1(b), which should be of concern to any agricultural interests here: "statutory refunds and adjustments provided therein". Now what you have done, you have eliminated the possibility of a farmer or anyone who uses gasoline off the highway of getting a refund on these—on this gas that is used.

CHAIRMAN AASHEIM: Mr. Wilson, you're talking about something that is beyond the amendment. We are talking about the amendment as presented by Mr. Harper. Any more discussion on the amendment?
Mr. Berg.

DELEGATE BERG: Would Mr. Graybill yield to a question?

CHAIRMAN AASHEIM: Mr. Graybill, will you yield?

DELEGATE GRAYBILL: Yes, Mr. Berg.

DELEGATE BERG: Does your measure include revenue from general sales and use taxes on cars?

CHAIRMAN AASHEIM: Mr. Berg, we're talking about this amendment by Mr. Harper. I think you are out of order.

DELEGATE GRAYBILL: He wants to stay on driver education.

CHAIRMAN AASHEIM: We want—we're talking about the amendment by Mr. Harper.
Mrs. Babcock.

DELEGATE BABCOCK: Can't I talk about Mr. Graybill?

CHAIRMAN AASHEIM: Certainly not. (Laughter) Are you ready for the amendment by Mr. Harper, to include in the second line from the bottom, after "system", "driver education"—comma—and "tourist promotion"—to include "driver education"? As many as are in favor of including driver education, say Aye.

DELEGATES: Aye.

CHAIRMAN AASHEIM: Contrary?

DELEGATES: No.

CHAIRMAN AASHEIM: The motion is carried. Now we're on the motion.
Mr. Berg.

DELEGATE BERG: Mr. Chairman, will Mr. Graybill yield to a question?

DELEGATE AASHEIM: Will you yield, Mr. Graybill?

DELEGATE GRAYBILL: Yes, sir.

DELEGATE BERG: It's the same question. I want to know if your amendment will include revenue from general sales and use taxes of automobile sales.

DELEGATE GRAYBILL: It covers fees from registration.

DELEGATE BERG: But that would not be the tax on the sale of a new car, would it?

DELEGATE GRAYBILL: And it—and to my way of reading it, it would not include the property tax on the car.

DELEGATE BERG: And then, a second question.

CHAIRMAN AASHEIM: Mr. Berg.

DELEGATE BERG: Will Mr. Graybill yield?

CHAIRMAN AASHEIM: Mr. Graybill, will you yield?

DELEGATE GRAYBILL: I yield.

DELEGATE BERG: Under your proposal, would it be possible for gasoline taxes from the sale of ordinary gasoline—that is, automobile gasoline—to be by the Legislature appropriated, for example, for airport purposes and vice versa—gasoline sales for airport purposes used for auto—

for highway development?

DELEGATE GRAYBILL: Yes, it certainly would. The purpose of this is to allow the Legislature free rein within the public transportation area to move the money around where the Legislature thinks it ought to go. That's the purpose of this.

DELEGATE BERG: And would you construe the amendment—the Section 6 in the majority report as permitting that kind of power or use by the Legislature?

DELEGATE GRAYBILL: No, it does not allow that, because it limits it to a—to funds derived from use of public highways and it doesn't include airports or other transportation facilities—parking lots, for example, or other systems that might be devised—tunnels or rockets or whatever we have.

DELEGATE BERG: No further questions.

CHAIRMAN AASHEIM: Any more discussion?
Mrs. Cross.

DELEGATE CROSS: Mr. Chairman, I've been listening all afternoon; I haven't spoken. I would like to make a point at this time. I have no objection if there's an alternative on the ballot. In fact, it might be a good idea. I don't think anyone in this body wants to destroy the Highway Department or their highway system. I think what we do want is a Highway Department that is not autonomous, that is responsible to somebody; and this is what I think is important in either alternative, and I'm not sure that we're getting that across.

CHAIRMAN AASHEIM: Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman, I rise in opposition to Mr. Graybill's amendment because I feel that if we are going to have an alternative on the ballot it should be Section 1(b). That's what the people want and you have the two different choices. This way we're cutting the pie in three pieces.

CHAIRMAN AASHEIM: Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman, will Mr. Graybill yield to a question?

CHAIRMAN AASHEIM: Will you yield, Mr. Graybill?

DELEGATE GRAYBILL: Yes.

DELEGATE MELVIN: Mr. Graybill, in the second line: "fines and forfeitures relating to registration, operation or use of vehicles on public transportation facilities". Would this mean that fines and forfeitures collected by city police departments and sheriffs' offices would also go into this fund?

DELEGATE GRAYBILL: I think it does.

DELEGATE MELVIN: Thank you.

DELEGATE GRAYBILL: That—it isn't a fund. It's a matter of whether the Legislature can divert it. It might not be diverted. In other words, the Legislature might not divert it from a city use, but the Legislature would have the right to divert it anywhere within the public transportation facilities area.

DELEGATE MELVIN: Another question, Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Graybill, will you yield?

DELEGATE MELVIN: Well, as I read it, Mr. Graybill, at the end of line 5, it says "shall be used solely for the payment." Is that—that would indicate that there's no choice?

DELEGATE GRAYBILL: "—shall be used solely for payment of obligations incurred in the development, construction, reconstruction, repair and maintenance", and so forth, "of public transportation facilities." So if the fines are now being used for the city general fund for non-transportation purposes, it would divert them, but if they were being used for highway safety or the Police Department, highway programs, street programs, they would not be diverted.

DELEGATE MELVIN: Thank you.

DELEGATE GRAYBILL: Yes.

CHAIRMAN AASHEIM: Mrs. Robinson.

DELEGATE ROMNEY: (Inaudible)

CHAIRMAN AASHEIM: Mrs. Robinson has the floor.

DELEGATE ROMNEY: (Inaudible)

DELEGATE ROBINSON: I'll yield to Mr. Romney.

DELEGATE ROMNEY: (Inaudible)

DELEGATE ROBINSON: Thank you, Mr. Chairman. I'm not so much in opposition as to putting this on the ballot as an alternative, but I'm in opposition to, really, what I think we're implying when we do this. I guess I rather resent being threatened by these powerful lobbyists that they're going to torpedo what we do if we don't submit to their demands. I see a real big hypocrisy in this body today. Everything—or, not everything—but a great many of the things that I've been for in this Constitutional Convention, such as poll-booth registration, a people's advocate, the right to sue, standards for reclamation of our land—everybody says, "Go to the Legislature; that's legislative, that's not constitutional." So, now we're saying that highways are constitutional. People aren't and people's rights aren't, but highways are. I think this is ridiculous. Everything that you people have been against, you've said it's legislative. Well, if this isn't legislative, I don't know what is. I guess it's a matter of priorities, and I guess it's too bad that environmentalists don't have the kind of lobbying effort that some of these other people do. Mr. Mahoney was concerned that his next session of the Legislature wouldn't appropriate money for the highways. Well, I'll contend that with people like the Chamber of Commerce and the AFL-CIO and the Bureau of Public Roads and the Iron and Steel Institute and the Petroleum Institute and the National Association of Manufacturers, the Timber Products Association, and all of these things lobbying that lobbied for this revenue in 1955, they'd be silly to do anything else but appropriate money for roads. I just think that—I guess I don't really care whether we put it on the ballot or not, because I think that, you know, we've really made the basic decision in this body that a few powerful lobbyists can tell us what to do, regardless of the principles that we've established before; that we're not—in some instances we're writing a constitution; but if you believe in something, you're going to say it's constitutional, and if you don't believe in something, you say it's statutory.

CHAIRMAN AASHEIM: Mr. Romney.

DELEGATE ROMNEY: Thank you, Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Romney.

DELEGATE ROMNEY: I dislike disagreeing with my seatmate, Mrs. Robinson, but I think that this is a matter which was born of the ballot of the people and it should be resolved, so it probably should go onto the ballot. I—Mr. Chairman, in this connection, I would like to ask a question of the President of the Convention.

CHAIRMAN AASHEIM: Mr. Graybill, will you yield to a question?

DELEGATE GRAYBILL: Yes, sir.

DELEGATE ROMNEY: Mr. Graybill, in view of the fact that you and Delegate Toole, and no doubt others, consider it necessary to put this on the ballot—and I'm not so sure that it is not a wise move in view of the fact that the antidiversionary measure came onto the ballot as a vote—or came into being as a vote of the people—I'm not so sure but what the alternative that you are offering is not the right one. I wonder what you think about the suggestion of Delegate Babcock about placing the old Section 1(b) on as the alternative. That is, the alternative—not something new.

CHAIRMAN AASHEIM: Do you want to answer that, Mr. Graybill?

DELEGATE GRAYBILL: Yes, I'm going to try. I think that the lobbyists and the groups—and there are very many interest groups that have real interest here—who threaten to oppose the Constitution—I don't think we need to put their position on as an alternative, because the truth of the matter is, their alternative is the present Constitution and if you put it as an alternative they've got two shots at it. It seems to me that what I'm trying to do, and I must admit I'm probably unfair in Mrs. Robinson's eyes, I'm trying to give the public two good choices, and if they happen to vote for either of them, we're in. Now, I'll admit that may be diabolical, but that's what I'm trying to do. Their—the interest groups' alternative is to vote the other way, and I don't think you're going to get them to come on and vote for an alternative when all they have to do is vote against the Constitution and—which is what they've threatened to do. Maybe I'm wrong. That's my view.

DELEGATE ROMNEY: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Romney.

DELEGATE ROMNEY: Maybe the President is wrong, maybe I'm wrong, and maybe Mrs. Robinson is wrong, and maybe Mrs. Babcock is wrong, maybe the pressure groups are wrong. But if we're going to put this on the ballot, it seems to me that the alternative is the old section. It seems to me that when, a day or so ago, we were debating about—in the Judiciary Article, we were debating about the judges running against their record. That's what this would be. The people would be voting against the record of the antidiversionary with the choice of another article.

CHAIRMAN AASHEIM: Mrs. Erdmann.

DELEGATE ERDMANN: Would President Graybill yield to a question, please?

CHAIRMAN AASHEIM: Will you yield, Mr. Graybill?

DELEGATE GRAYBILL: Yes.

DELEGATE ERDMANN: I stand in opposition to this alternative, and I'm wondering if you realize that by the wording of this you would be torpedoing the general fund of the cities—of Great Falls? The phrase that you have in here, as Mr. Melvin said, in which—fines and forfeitures relating to operation of vehicles on the city streets, I'm sure, would be included in this—would have to go for highway or some such purpose, street department or anything like this—related—wouldn't it?

DELEGATE GRAYBILL: It would have to go for some public transportation facility, but I can tell you—and I'm sure you'll agree with me, Mrs. Erdmann—that there are all kinds of public transportation facilities that the city of Great Falls could spend that money for and, in fact, does today. When we put the fines into the general fund, they come right back out and pave the alley or grade the street.

DELEGATE ERDMANN: No, sir. The Street Department has a separate mill levy. The general fund, where we're so desperately pressed for—

DELEGATE GRAYBILL: I see.

DELEGATE ERDMANN: —funds pays the Police and the Fire Department and those other items. Street Department levies are separate, so this is something to take into consideration. In Great Falls it amounts to about a hundred and sixty thousand dollars a year, the equivalent of two mills of property tax.

DELEGATE GRAYBILL: Mr. Chairman.

CHAIRMAN AASHEIM: Yes, Mr. Graybill.

DELEGATE GRAYBILL: Well, then, I guess, Mrs. Erdmann, we already—we need an antidiversion amendment in Great Falls now, because they're taking money from people for highway fines and doing other than highway things with them and the purpose of this would be to keep public transportation funds in the public transportation field. It might involve some shifting of funds, but notice that it's all still within the Legislative Assembly's prerogative. Nobody is making them move them at all. It just gives the Legislature the right to move them if they ever needed to.

CHAIRMAN AASHEIM: Mr. McNeil, you are wanting to make a comment?

DELEGATE McNEIL: (Inaudible)

CHAIRMAN AASHEIM: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, will Mr. Romney yield to a question, please?

CHAIRMAN AASHEIM: Mr. Romney will you yield?

DELEGATE ROMNEY: Certainly.

DELEGATE REICHERT: Mr. Romney, you mentioned having the old Section 1(b) as an alternative. I think there's an analogy here between what we've done with the unicameral-bicameral. Now, we're not offering the old bicameral as an alternative; we're going to offer a new bicameral and a unicameral, and the old bicameral will be in the body of the Constitution, just as the old Section 1(b) will be in the body of the Constitution. I concur with Mr. Graybill that if we're going to have an alternative, we should have one. But it is my feeling, Mr. Chairman, that we should establish the fact first, whether we want an alternative, and then perhaps we should perfect an alternative, think about an alternative, rather than just accepting this with the questions that have arisen.

CHAIRMAN AASHEIM: Mr. Rollins.

DELEGATE ROLLINS: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Rollins.

DELEGATE ROLLINS: I wish to speak against the idea of compromise—the idea of alternative, rather. I don't think that we came here to talk things over and then say—go back to the people and say, "Here are a couple of ideas we had; what do you think?" I feel resentment that there wasn't a clear-cut vote on the unicameral or bicameral Legislature. There could still be, perhaps, and I hope there is. I'm in favor of deciding which plan we want here and, if we settle on one, put it in the Constitution and submit the Constitution to the people. I don't know whether Hamlet was right or Laertes was right; but because Hamlet couldn't make up his mind, at the final scene of the play, they were all dead; and I don't want that kind of a thing to occur here. I will vote for the plan that I think is proper. I support the majority plan, and I hope that we can submit whatever we have to the people without any alternatives. Thank you.

CHAIRMAN AASHEIM: Mrs. Eck.

DELEGATE ECK: Mr. Chairman.

CHAIRMAN AASHEIM: Mrs. Eck.

DELEGATE ECK: I really like the looks of Mr. Graybill's plan. I think the idea of looking at public transportation as a whole, rather than just automotive transportation, is probably something we should have thought about earlier. However, I feel if we have alternatives on the ballot, that these are going to be two very confusing alternatives. I think that I, myself, would have a very difficult time choosing between them. I think that if we decide we want an alternative on the ballot, it might be a good idea to rethink the two of them and develop one good article which would do this, which would really be pretty much possible. I was thinking of Mr. Heliker's amendment at the end. We could almost say, "and other uses of public transportation" or "related to public transportation". However, then we would also have to add at the beginning so far as where these funds come from. I really think that our alternatives should be either, as Mrs. Babcock says, put something that is going to be wholly satisfactory to all of these big interests that we seem to be afraid of on the ballot, and there would be some advantage having it there. You know, if we put that in the body of the Constitution, why, they might spend all those millions of dollars just going out and telling people, "Vote yes for our Constitution. It's got in there what we want." I still think that the people would prefer something else. I think that everyone in our district campaigned on the basis that we were going to come here and delete the antidiversion funds—or antidiversion amendment. We, I think, had only one or two people who, for very obvious reasons, opposed us on this basis. We had only one candidate who ran on the basis of supporting this, and he lost. I think that the other really good alternative is to have an option on the ballot to take this out entirely—in other words, to put one in and give the voters an option of deleting one. But I think that putting two good plans in an area that is really confusing and isn't going to get that much public attention anyway and is going to have a lot of interests trying to obscure the real issues is really a poor move. And I think maybe what our discussion ought to evolve around at this point is, do we really want alternatives?

CHAIRMAN AASHEIM: Mrs. Pemberton.

DELEGATE PEMBERTON: Thank you, Mr. Aasheim. May I ask Mr. Murray a question?

CHAIRMAN AASHEIM: Mr. Murray, will you yield?

DELEGATE MURRAY: I'll yield.

DELEGATE PEMBERTON: Thank you, Mr. Murray. Possibly at this time it might be a good idea how we are going to present the Constitution finally to be voted by the public. Mr. Murray, will this be presented article by article, or section by section, or would you please describe the process?

DELEGATE MURRAY: Mr. Chairman.

CHAIRMAN AASHEIM: Mr. Murray.

DELEGATE MURRAY: Mrs. Pemberton, I believe that the present plans are to have the Constitution as we write it proposed in its entirety, with an explanation section by section, so that you would vote for or against it. Then, with respect to the Legislative Article, as Illinois has proposed it and as I believe as North Dakota just recently proposed it, there would be two alternatives below the vote on the Constitution as is: Yes or No; would be the—would you want a bicameral, or would you want a unicameral? And with respect to this particular issue, I would think that maybe it could be handled: do you want to retain, or do you not?—do you want to have an antidiversion amendment such as we have now, or not? Or perhaps, as Mr. Graybill has proposed it here, you could have the majority Section 6 in the body of the Constitution, with an optional vote to have what he has proposed by way of his amendment here. So I think really, Catherine, the answer is that we can do it pretty much as we choose.

DELEGATE PEMBERTON: For those who would prefer the Section 1(b) as it is written into the present Constitution, where would that put that in the new Constitution if it were decided between two proposals?

DELEGATE MURRAY: Shoot that at me again, Catherine, would you please?

DELEGATE PEMBERTON: If it were decided between the section—this new proposal and the section in the old Constitution—or in the present Constitution which refers to the same thing, where would that be written into the proposal so the people would have a choice?

DELEGATE MURRAY: As I understand your question, you would like to retain what has been proposed and turn down in 1(b), which is the existing constitutional amendment?

DELEGATE PEMBERTON: Not necessarily turn it down—give a choice to the people.

DELEGATE MURRAY: Yes, you would like to have it as is now in the constitutional amendment, right? And this alternative that the President has now proposed—how would you handle that on the ballot?

DELEGATE PEMBERTON: Yes, that the majority proposal has, so that the people could vote as they wished if this is so controversial.

DELEGATE MURRAY: Well, frankly, I would think that we could do it in any manner that we choose. That's my answer. I think that we could write one into the body and have the other as an option, or we can have both as options with neither in the body.

CHAIRMAN AASHEIM: The Chair recognizes Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move that the committee rise, report progress and ask leave to sit again.

CHAIRMAN AASHEIM: As many in favor of the motion, say Aye.

DELEGATES: Aye.

CHAIRMAN AASHEIM: Contrary? (No response)

CHAIRMAN AASHEIM: Motion is carried. Please remain at ease for a moment. The Chair has missed his evening meal, but I guess that's better than losing it. (Laughter)

(President Graybill presiding over Convention)

CLERK HANSON: "March 3rd, 1972—"

PRESIDENT GRAYBILL: Will the clerk please read the title of the committee report.

CLERK HANSON: "March 3rd, 1972. Mr. President. We, your Committee of the Whole, having had under consideration Report Number 7 of the Committee on Revenue and Finance, recommend as follows:"

PRESIDENT GRAYBILL: Very well, Mr. Murray, do you want to move—unless—does anyone want the Committee of the Whole Report read in its entirety?

DELEGATES: No.

PRESIDENT GRAYBILL: Very well, Mr. Murray, would [you] make a motion that it be adopted?

DELEGATE MURRAY: Mr. President, I move that the Committee of the Whole report be adopted.

PRESIDENT GRAYBILL: Very well; all in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: And so ordered. Now, before we adjourn, two announcements. First of all, the blue sheets you've got talks about the delegate party next week. Please note that the date is now changed to Wednesday, the 8th, instead of Tuesday, the 7th. So make note of that, and if you have guests that you want to invite, you can do so. And secondly, Mr—I see Mr. Rygg has gone.

Mr. Rygg, do you want to announce your meeting?

DELEGATE RYGG: Revenue and Finance, Room 437 at 8 o'clock in the morning.

PRESIDENT GRAYBILL: Revenue and Finance, in the morning, 437.
Mr. Blaylock.

DELEGATE BLAYLOCK: Bill of Rights meeting, tomorrow morning, 8 o'clock.

PRESIDENT GRAYBILL: Bill of Rights, at 8 o'clock.
Mr. Aasheim.

DELEGATE AASHEIM: Legislative Committee, at 8:30. Bring your Style and Drafting forms with you, and we will go over and check if we agree with what the Style and Drafting has done.

PRESIDENT GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Style and Drafting, at 8 o'clock. And we're going to have some conflicts with other committees, so I urge everyone to be there.

PRESIDENT GRAYBILL: Are there other announcements?
Mrs. Babcock.

DELEGATE BABCOCK: I would just like to announce, for the benefit of the ladies, that tomorrow night there is a Nile style show, for the benefit of crippled children, at the Civic Center, if any of you would like to go.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. President, the Rules Committee, meeting at 8:15 in the morning, right outside of the Rules Committee Room because the Administrative Committee is meeting in the room. And are you ready to adjourn?

PRESIDENT GRAYBILL: I see Mr. Toole standing.

DELEGATE TOOLE: I was just going to make the announcement of the Administration Committee at 8 o'clock in the Rules Committee room.

DELEGATE MURRAY: Mr. President, I move that the Convention adjourn until the hour of 9 a.m., March 4, 1972.

PRESIDENT GRAYBILL: All in favor, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, Nay.
(No response)

PRESIDENT GRAYBILL: So ordered.

(Convention adjourned at 6:50 p.m.)

March 4, 1972
9:10 a.m.

Thirty-Eighth Day

Convention Hall
Helena, Montana

PRESIDENT GRAYBILL: The Convention will be in order. Will you all please stand, and Mr. Scanlin will give us the invocation.

DELEGATE SCANLIN: The disciples came to Jesus saying, "Lord, teach us to pray." Let us pray together the prayer He taught us. Our Father, who art in Heaven, hallowed be Thy name. Thy kingdom come, Thy will be done on earth as it is in Heaven. Give us this day our daily bread and forgive us our debts as we forgive our debtors, and lead us not into temptation, but deliver us from evil, for Thine is the kingdom and the power and the glory forever. Amen.

PRESIDENT GRAYBILL: Very well, we'll take attendance this morning by voting Aye on the voting machines.

CLERK HANSON: Mr. President, may Delegates Arbanas, Arness, Belcher, Eskildsen and Holland be excused, please?

PRESIDENT GRAYBILL: Arness is present, so take that one out.

CLERK HANSON: May Delegate Felt also be excused, please?

PRESIDENT GRAYBILL: (Inaudible)

CLERK HANSON: Delegate Babcock, Delegate Drum, Delegate Harlow, Delegate James, Delegate Speer.

PRESIDENT GRAYBILL: Read the absences again.

CLERK HANSON: They're all here.

PRESIDENT GRAYBILL: Very well. Take the ballot—take the attendance.

Aasheim	Present
Anderson, J.	Present
Anderson, O.	Present
Arbanas	Excused
Arness	Present
Aronow	Present
Artz	Present
Ask	Present
Babcock	Present
Barnard	Present
Bates	Present
Belcher	Excused
Berg	Present
Berthelson	Present
Blaylock	Present
Blend	Present
Bowman	Present
Brazier	Present
Brown	Present
Bugbee	Present
Burkhardt	Present
Cain	Present
Campbell	Present
Cate	Present
Champoux	Present
Choate	Present
Conover	Present
Cross	Present
Dahood	Present
Davis	Present
Delaney	Present
Driscoll	Present
Drum	Present
Eck	Present
Erdmann	Present
Eskildsen	Present
Etchart	Present
Felt	Excused
Foster	Present
Furlong	Present
Garlington	Present
Graybill	Present
Gysler	Present
Habedank	Present
Hanson, R.S.	Present
Hanson, R.	Present
Harbaugh	Present
Harlow	Present
Harper	Present
Harrington	Present
Heliker	Present
Holland	Excused
Jacobsen	Present
James	Present
Johnson	Present
Joyce	Present
Kamhoot	Present
Kelleher	Present
Leuthold	Present
Loendorf	Present
Lorello	Present
Mahoney	Present
Mansfield	Present
Martin	Present
McCarvel	Present
McDonough	Present

McKeon	Present
McNeil	Present
Melvin	Present
Monroe	Present
Murray	Present
Noble	Present
Nutting	Present
Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present

CLERK HANSON: Mr. President, 96 delegates present, 4 excused.

PRESIDENT GRAYBILL: Very well. The journal may so show. Order of Business Number 1, Reports of Standing Committees. Will the clerk read the Style and Drafting Committee report.

CLERK HANSON: "To Montana Constitutional Convention. The Committee on Style, Drafting, and Transition and Submission transmits revisions of the Executive Article for consideration of the Convention. John M. Schiltz, Chairman; William A. Burkhardt, Vice-Chairman."

PRESIDENT GRAYBILL: The Style and Drafting Committee report on the Executive is referred to General Orders. Reports of Select Committees. None. Communications. None. Introduction and Reference of Delegate Proposals. None. Final Consideration. None. Adoption. None. Motions and Resolutions. On Number 7, Motions and Resolutions, we do have a matter that we want to take up today, out of the Rules Committee, but we're going to pass that, if it's all right with everyone, and take it up after we've finished Revenue and Finance. Hearing no objection, we'll do that. Unfinished Business.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Special Orders.

CLERK HANSON: None.

PRESIDENT GRAYBILL: General Orders.

Mr. Murray.

DELEGATE MURRAY: Mr. President, I move the Convention resolve itself into Committee of the Whole for the consideration of business under General Orders.

PRESIDENT GRAYBILL: The motion is to move the Convention into Committee of the Whole. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

(No response)

PRESIDENT GRAYBILL: So ordered.

(Committee of the Whole)

CLERK HANSON: "The Style and Drafting Committee Proposal Number 3 on Legislative Article, having been duplicated and placed on the delegates' desks on the 2nd day of March, 1972, at 9 o'clock a.m., is now in compliance with Rule Number 23, Montana Constitutional Convention Rules. March 4, 1972. The following committee proposals are now on General Orders: Revenue and Finance, Bill of Rights, Education, Public Health, Local Government, General Government, Style and Drafting Report Number 3 and Style and Drafting Report Number 4.

CHAIRMAN GRAYBILL: Very well. Yesterday we were considering, in Committee of the Whole, Section 6 of Revenue and Finance Committee Proposal. And you will recall that we had tentatively adopted Section 6 and that I had taken the floor to propose an alternative to be added to the ballot. At this time, I would like to withdraw my proposal—that is, an alternative to be put on the ballot. And I so withdraw. The committee met with me this morning, and we feel that it's—this is not necessary at this time. I agree with that, and we're going to withdraw that proposal. Therefore we're back on Section 6.

Mrs. Babcock, I see you have an amendment.

DELEGATE BABCOCK: Mr. Chairman.

CHAIRMAN GRAYBILL: Would you like the clerk to read your amendment?

DELEGATE BABCOCK: Please.

CLERK HANSON: "Mr. Chairman. I move to delete Section 6 of the Revenue and Finance Committee Proposal and to place on the ballot the following: 'Section 6. Revenue derived from fees relating to registration, operation or use of vehicles on public highways, or from excise or license taxation on fuels and other energy sources used for propulsion of such vehicles, shall be used solely for the payment of obligations incurred for the development, construction, reconstruction, repair, operation, and maintenance of public highways, streets, roads and bridges for county, city and town obligations on streets, roads and bridges, driver's education, enforcement of highway safety, tourist promotion, and for statutory refunds and adjustments, administrative and collection costs as authorized by the Legislature—Legislative Assembly.' Signed: Babcock."

DELEGATE BABCOCK: Mr. Chairman. I would like to have you change the first sentence there. I should have written, "I move to add, as an alternative to Section 6, and to place on the ballot the following". It has a wrong beginning there. Now, if I may speak to the motion, Mr. President.

CHAIRMAN GRAYBILL: All right. Let me get it straight here. You move to add as an alternative on the ballot, huh?

DELEGATE BABCOCK: To Section 6, yes.

CHAIRMAN GRAYBILL: All right. Mrs. Babcock's motion is to add, as an alternative on the ballot, the language that she proposes here. Mrs. Babcock, may I inquire? I haven't proofread it. Is this Section—is this 1(b)?

DELEGATE BABCOCK: Yes, very similar.

CHAIRMAN GRAYBILL: All right, this is 1(b).

DELEGATE BABCOCK: May I speak to the motion?

CHAIRMAN GRAYBILL: Very well.

DELEGATE BABCOCK: It isn't exactly 1(b), it's very similar to 1(b).

CHAIRMAN GRAYBILL: All right. Maybe you'll explain it to us.

DELEGATE BABCOCK: Yes. Mr. President and fellow delegates, Mr. Rygg was certainly correct when he stated, yesterday, there are two basic factions within the Convention. On the North Pole, we have those who believe no funds should be earmarked because it creates a self-perpetuating and unresponsive bureaucracy. Further, as was stated by Mr. Toole, these delegates believe today's voters have a different attitude toward earmarking highway funds and, in fact, he and other delegates were elected on that basis. On the South Pole, we have those who believe highway funds should be earmarked for highway construction and maintenance. These delegates fear the Legislature will raid the highway fund for other general governmental expenditures, such as education or welfare. They contend the gas tax and motor vehicle fees are use taxes imposed on the highway user to pay for the building of roads and that such taxes should not be diverted to general governmental programs. Yesterday we spent over three hours trying to bridge this gap and to meet the Equator. We were not successful. May I therefore propose we leave the matter entirely up to the voters? Let's remove the committee proposal from the new Constitution and submit an antidiversion section to the voters on a side ballot. Those who contend the people today do not want earmarked funds will win their case by not having any earmarked funds if the voters reject the side ballot. Those who contend the majority of the people today want earmarked funds can win their case if the voters approve the side ballot. In either case, the new Constitution is not placed in jeopardy. If we leave an antidiversion section in the new Constitution, we alienate one group or the other, even if the section is modified, such as was done by the committee, by giving the Legislature the power to divert with a three-fifths vote. We have still alienated a large number of voters. Further, if we adopt the general transportation fund concept of Mr. Graybill's—which, of course, now he has withdrawn—we would still alienate a large number of voters. Those persons who support antidiversion do not believe either the committee's proposal nor the general transportation fund adequately protects highway funds from legislative raids or diversion. So they have no choice but to try to kill our entire Constitution, which they do not wish to do. They want a new constitution as much as all the other Montana citizens, and as much as we want a new constitution. If we do not put any antidiversion section in the new Constitution, we have gained the support of the idealists but still run the risk of losing the entire ball game. Ladies and gentlemen, I firmly believe we cannot jeopardize all of our efforts in the new Constitution over this one issue. If we would be foolish and senseless, let's protect our new Constitution by moving this entire controversial issue to a side ballot and let the people decide the matter. The antidiversion section I have proposed to be placed on a side ballot is the same as the present 1(b) section with some minor changes. I have added county roads and city streets to assure them these funds can be spent locally if needed. As dictated by your vote yesterday, I have also added Driver's Education and the Highway Patrol. You will note, my proposal retains the present language of statutory refunds and adjustments so as to assure the farmers and ranchers they will continue to receive funds for nonhighway use of fuel. I left fines and forfeitures out of the cities—I left fines and forfeitures, excuse me, out so cities can continue to receive these funds as in the past. Finally, I used the modern and positive language like that used in the committee's proposal. Basically, as stated, my proposed section is the same as that which we now have with these minor changes, which we hope will be acceptable to everyone concerned. If the people vote for this proposal, then those who advocate—if the people vote this proposal down, then those who advocate complete legislative control of all funds will have been right. On the other hand, if the people approve this proposal, then those who have advocated earmarking highway funds will have been right. But in either event, our new Constitution will not have been lost, which most certainly is our first priority. We cannot jeopardize the new Constitution to satisfy a few special interests. Whether they be highway users or idealists, it would be an insult to the people of Montana. I certainly urge your support.

DELEGATE RYGG: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I hate to resist a motion made by Mrs. Babcock, but I think maybe I'm going to have to do that. I would first like to ask Delegate Babcock a question, if she would.

DELEGATE BABCOCK: I probably won't know the answer.

DELEGATE RYGG: Oh, yes.

DELEGATE BABCOCK: I'd rather bake a cake.

DELEGATE RYGG: All I was wondering—I didn't quite understand. Was this going on the ballot as an alternate proposal? Or would just be the one vote, Yes or No?

DELEGATE BABCOCK: As an alternate proposal on the side ballot.

DELEGATE RYGG: Along—Mr. Chairman, may I direct my question—

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: You mean along with this Section 6 that the committee had proposed?

DELEGATE BABCOCK: If you think that's advisable.

DELEGATE RYGG: Thank you.

DELEGATE BABCOCK: I originally wanted to delete your whole section, but if this would get the job done, I'll compromise.

DELEGATE RYGG: Thank you. Mr. Chairman, I think it's only fair that I tell you that our committee did meet this morning, and I think we had thought about a lot during the night. We felt that because we have been charged to write a constitution the best way we can, and to really not allow too many outside influences to change our thinking one way or the other, it is the unanimous feeling of this committee that we try to pass Section 6, as proposed to you yesterday, with one more amendment which we might need. We did probably have to put in statutory refunds. Our thinking had been that public highways would take care of it but maybe not. But aside from that, we feel that we should just write the Constitution that way. That is, the committee feels that this is the thing to do; this is the best way to go. We can't believe that there is anyone who will vote us down because of it. Now, we realize we could be wrong, but it's difficult for us to believe. I have seen letters from farmers here and there throughout the state. I've seen others. I have been given many threats that have said, "Well, if you do that, we're going to defeat the Constitution." Now, many of those that have said that, I'm sure, don't have the power to do it. Maybe this particular group does. But it is the recommendation of the committee that we try to do the best we can. We feel that right now this Section 6 is what it is, so I suppose I would have to resist this motion—this amendment by Mrs. Babcock. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Mr. Chairman, will Mrs. Babcock yield to a question?

CHAIRMAN GRAYBILL: Mrs. Babcock?

DELEGATE BABCOCK: Yes, sir, Mr. Toole.

DELEGATE TOOLE: I'm still not clear on this, Mrs. Babcock. You want—in your amendment, you say you want to delete Section 6 altogether, is that correct? Or would you leave Section—

DELEGATE BABCOCK: No, as I—that's my first preference. When I came here, I thought I was going—that Mr. Toole—Mr. Graybill still had his motion on the floor. And I think if we can offer this as an alternate or if we can substitute it for the majority proposal, it'll be fine with me.

DELEGATE TOOLE: Well, in other words, you would leave—Mr. Chairman, just one more question—you would leave Section 6 in and then you would have old Section 1(b) as amended as an alternative proposal?

DELEGATE BABCOCK: As an alternate, yes, on the ballot.

DELEGATE TOOLE: Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Toole, to clear that up, when Mrs. Babcock offered the amendment, she asked to change that first line after "I move". And it now reads, "I move to add as an alternative on the ballot the following." And it has the effect of being an alternative in place of the alternative I withdrew.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I don't like the motion because—and I didn't like it yesterday, but I never got around to saying so—because at this stage of the game, I don't think we're in a position to say what should or should not go on the ballot, because we don't know what else there might be that should go on the ballot. I don't think the Convention should be bound. Everybody who loses anything can say, "I make a substitute motion that this go on the ballot", and we're going to have a ballot with alternatives that won't quit. And there won't be a ballot in the State of Montana, or a voting machine, long enough to contain them all. I think that if it turns out after all the debates are over on all the issues that will come before this Convention, then we make a recommendation to the Convention, which will probably come out of Style and Drafting, as to what should be on the ballot. And then, when the Convention can look at everything that has a potential for an alternative choice, then it [can] decide which is more important: Mrs. Babcock's idea, may be my idea about how I want my judges selected, may be somebody else's idea that lost by a close vote. I think it's too—it's premature now to bind the Convention to what shall go on the ballot just because we have a hot issue at the moment. Next week it's going to be something under Bill of Rights that's going to be just as hot, and I think it's too early to decide that.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: May I direct a question to Mr. Schiltz?

CHAIRMAN GRAYBILL: Mr. Schiltz, will you yield?

DELEGATE SCHILTZ: I yield.

DELEGATE RYGG: I've been thinking about this same thing, Mr. Schiltz, and my problem has been that if we conclude this—these proposals as we do, section by section, then in our rules, can we go in and open them up and decide if we want an alternate?

DELEGATE SCHILTZ: I don't know. Well, as I conceive the way this Convention will finally operate, we will have approved everything section by section. Then, I think the Style and Drafting Committee will report back to the Convention a ballot that has been adopted and agreed upon within that committee. And then, that—there's a debate on the question of whether that ballot is the ballot that will go out, or another ballot. The Convention can debate to take this item out of the alternative and put that one in, in spite of the Style and Drafting Committee's proposal. But we'll come out with something concrete.

DELEGATE RYGG: Mr. Chairman, could I direct another question?

CHAIRMAN GRAYBILL: Yes.

DELEGATE RYGG: My thinking was this—if, today, we just passed Section 6—just for instance—but then, at another time, say 10 days from now, we should feel that, well, maybe that was wrong; maybe there should have been an alternative. Then is the possibility closed as to putting an alternative at that time?

DELEGATE SCHILTZ: No, I would say not. I would say that Style and Drafting, I think, could say—we could look at an issue that came out on the floor and say that was a tight enough issue so that perhaps we will suggest that be put in the alternative. Or as an individual choice, do you want capital punishment or do you not want capital punishment?

DELEGATE RYGG: Thank you. That answers my question.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, I move that the alternate proposal proposed by Mrs. Babcock, if it meets with the approval of the committee as to its content, be referred to the Rule—to the Style and Drafting Committee for final report of that committee at a later time in the Convention.

CHAIRMAN GRAYBILL: I take it to be your motion to refer Mrs. Babcock's proposed alternative amendment to the Style and Drafting Committee. Is that your—Mr.—you may speak.

DELEGATE JOYCE: Well, my thinking on it is this, that this will meet Mr. Schiltz's well-pointed objection. It seems to me that it's too early to make this decision. And under the rules of the Convention as they have been drafted, with the form of the ballot being assigned to the Style Committee, that if this Convention does believe that this issue was of sufficient importance that it should be, at a later time, considered for submission as an alternate, that if we approved it at this time as to its content and then, before taking any final action thereon, we referred it to the Style and Drafting Committee, they could then report out later in the Convention that they propose a ballot containing this alternative along with Section 6 that the Committee of the Whole has already adopted. And if at that time they decline to put it on the ballot, why, then the issue can be debated again when the Style and Drafting report to the Committee of the Whole on the ballot comes before the Committee of the Whole of this Convention.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. Chairman, I would rise to oppose both Mr. Joyce's amendment and Mrs. Babcock's motion, for this reason. This Convention can do anything they want to do. Now—right now, under the rules under which we are operating, it—nothing is included as to bringing later considerations up. But Mr. Schiltz's point is very well taken. At some point down the road, this body is going to want to look at what is probably going to be the final product. And at that time, it appears to me, it would be the time for us to say, "Here are the four alternatives that we would like to put on the ballot"—or "here are the three", or "here are the two", or maybe "the one". But to make decisions now that will lock us into something down the road, it doesn't look like it's wise. We should consider what the impact is going to be after we have a look at the final product. And I believe, Mr. Chairman, I'm correct in assuming that we—this body drew the rules under which we are now proceeding, and I'm confident that if it looks like it is the will of the majority, that we can suspend the rules and just do about whatever we want to at a later time. Is that true, Mr. Murray, or not? I'd ask you to yield for a question.

DELEGATE MURRAY: I'll yield.

DELEGATE DRUM: Is it true that we could suspend the rules and consider some of these alternatives that may go on the ballot at a later time?

DELEGATE MURRAY: I think that we could suspend the rules and consider some of these alternatives. I also feel that it is within the rules—within the province of our rules to do what Mr. Joyce has moved that we do, to put this matter as a substantive matter relating to the matter of the ballot into Style and Drafting so that they can accept or reject at some future date, after they have looked at the document in its entirety. So I think we could do either one. Now, perhaps in—a little explanation. I've been asked many times, "Who has the province of determining the question of what shall be contained within the ballot?" Our rules, without specifically stating so, provide that the Committee on Style and Drafting, once it has completed its primary work on the matter of style, then becomes a committee—a substantive committee for the purpose of giving substantive consideration to the question of the ballot and of the form of that ballot under our Enabling Act. And so I feel they have within their province these questions and they will bring this ballot back to us. And we will debate it fully in Committee of the Whole, just like we're debating this matter now, and decide what that ballot will be. So, really the answer to your question is, it can be done both ways, or either way; either by suspending the rules or by taking the action that Mr. Joyce has recommended. And we will face the question at the same time in the same manner, really.

DELEGATE DRUM: Mr. Chairman. I would like to make one more comment, not in defense of the original Section 6 necessarily, but a point of clarification—that within the section as was printed yesterday and was voted on by a majority of this body, there is an alternative. The alternative is in the three-fifths. If everything goes the way that Mrs. Babcock's many friends says it should go and if the Highway Department operates in a satisfactory manner to the Legislature, the antidiversion of funds will never be a problem. However, if the Highway Department does not respond to the will of the people and to the will of the Legislature, at that point the three-fifths probably will become a factor. And it appears to me that we have an alternative written into the same paragraph at the present time. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman. I rise in support of the motion of Mr. Joyce. I think we should let the Committee on Style and Drafting know that we want to preserve our right on this matter. Now, there's another possibility that no one has talked about, and I think it may be a real possibility. If we keep messing around with this sales tax that's on gasoline and other motor fuel, the taxpayers who pay this may rise up and say, "There's enough of this nonsense, let's just repeal the tax on motor fuel." And that'll end the whole problem; and I'm not so sure that might not be such a bad idea. We're taking money that was raised for a specific purpose and now we're saying that didn't mean anything. We said, "Sure, we pulled a fraud on the taxpayers, and now it doesn't matter. Times have changed; morals have changed; our word doesn't mean anything; the vote of the people doesn't mean anything." And I think we better give this matter some consideration, and I rise in support of the motion of Delegate Joyce that the Babcock amendment be referred to the Committee on Style and Drafting, with the recommendation that it be brought back as an alternate measure on the ballot. Thank you.

CHAIRMAN GRAYBILL: Mr. Aronow. That is not the sense of his motion. He—there's no recommendation involved at all. It's to refer the thing to Style and Drafting. And I just—that's the motion. If you want to amend the motion, you may.

DELEGATE ARONOW: Will Mr. Joyce yield, please?

DELEGATE JOYCE: I will.

DELEGATE ARONOW: What is your motion then, Mr. Joyce?

DELEGATE JOYCE: My motion was that, as the President stated, that this matter be referred to the Committee on Style and Drafting for consideration, to be reported back to—by the Style and Drafting Committee to the Committee of the Whole. And my motion does not carry any recommendation to that committee, one way or the other.

DELEGATE ARONOW: Thank you.

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman. I am a little bit afraid that the Convention may be getting lulled into a false sense of security on this business of referring things to be put on the ballot. Mr. Gysler had a constituent here a few days ago who posed a question that none of us can answer. And it was simply this: "Will there be two times to vote on the Constitution, or just one?" She says, "If there are all these alternatives, how do I know how it's going to come out? I might want the Constitution with one set of these combinations, but I might not want it with another. And how do I get to decide?" She says, "If most of the people vote, for example, for a unicameral, I might accept the Constitution if it didn't have 'uni', but I might want to vote against it if it did have 'uni'. And how will I ever know what I'm really going to vote on?" I've been puzzling about this for the last week, and I simply do not have an answer yet. And I just want to warn all hands that we do not have a sort of "happy haven of refuge" by putting a great combination of alternatives on the ballot, because the net result of it is going to be that people will say, "Gee, I don't know what I'm getting, so better I not vote for any of it", and it'll ding the whole thing.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, fellow delegates. I rise in opposition to Mr. Joyce's motion. But I have a concern that I picked up in the last four minutes, and I certainly hope that other delegates here have the same concern. I'll try and state it. I understood, or felt I understood, that it was the function of this group to decide what would go on the ballot and that it was the function of Style and Drafting to suggest to us how it would best go on the ballot. And if I'm wrong in that, I'd certainly like to have it explained to me and to the rest of the group.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: If Mr. Furlong is wrong on that, I would like to know, certainly, as the Chairman of Style and Drafting Committee. As I view it, the Style and Drafting Committee will report, as Mr. Murray said a few minutes ago, a recommended ballot. We may be 180 degrees off of anything that you like or want or had previously thought. That will come to Committee of the Whole, and then you move to delete or you move to strike or you move as a substitute motion that instead of this, that go in, and that stay out. It'll be a first-class debate, I'll guarantee you, but that's as I conceive the form.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: May I ask Mr. Schiltz to yield to a question?

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Yes.

DELEGATE FURLONG: Mr. Schiltz, my concern is that, if I understand what you're saying correctly, you can, in fact, substantively change the decision of this body by the way you determine to present it. Now, isn't it the function of this body to determine what will go on—the substantive material that will go on the ballot?

DELEGATE SCHILTZ: Absolutely, after a debate in the Committee of the Whole. I'm not going to decide anything. The Convention is going to decide—nor is my committee—but we'll make recommendations, and then the fight is on.

CHAIRMAN GRAYBILL: Mr. Driscoll.

DELEGATE DRISCOLL: The crucial motion yesterday, a motion by Foster and Scanlin to delete Section 6, page 12 of the majority report, and inserting in lieu thereof Section 1(b) of Article XII of the present Constitution. There were the following votes: 72 Nay and 17 Aye. I would like to share—to remind the Constitution [Convention] of the action which we took yesterday on Section 6, if you'd review it for the benefit of the Convention. (Inaudible)—the "semifinal action", which was your term.

CHAIRMAN GRAYBILL: Well, perhaps you have reference to the fact that the last thing we did was, by voice vote, to decide that Section 6 was the sense of the Convention. We have not finally adopted it to refer to the Convention in the Committee of the Whole, but we did pass, by voice vote, Section 6 for adoption.

DELEGATE DRISCOLL: Mr. Chairman, is a substitute motion in order?

CHAIRMAN GRAYBILL: Yes.

DELEGATE DRISCOLL: I would move the adoption of Section 6 as proposed by the committee.

CHAIRMAN GRAYBILL: Now, do you mean to imply by that, that when this committee does arise and report, after having under consideration Section 6, that it recommend to the Convention that this section be adopted?

DELEGATE DRISCOLL: That is my intention.

CHAIRMAN GRAYBILL: Very well. That substitute motion by Mr. Driscoll will be debated.

Mr. McDonough.

DELEGATE McDONOUGH: Mr. Chairman, I'd like to ask Mr. Driscoll a question.

CHAIRMAN GRAYBILL: Mr. Driscoll.

DELEGATE DRISCOLL: Yes, Mr. McDonough.

DELEGATE McDONOUGH: Mr. Driscoll, would you consider, in your substitute motion, amending it so that we add to Section 6, on line 10 of page 12, after the word "for", "statutory refunds and adjustments"?

DELEGATE DRISCOLL: Yes, Mr. Chairman, I would accept that.

CHAIRMAN GRAYBILL: Well, now, you gentlemen put the Chair in a spot here. I realize you want to amend Section 6. I think maybe what you better do is withdraw your motion to adopt Section 6 and let's vote on these other two matters. And then we'll still have a motion to adopt Section 6.

DELEGATE DRISCOLL: I will withdraw it.

CHAIRMAN GRAYBILL: Very well. The issue, then, is on Mr. Joyce's motion to refer Mrs. Babcock's motion for a separate alternative to Style and Drafting.
Mr. Monroe.

DELEGATE MONROE: Mr. President. I rise to oppose both these motions of Mr. Joyce and Mrs. Babcock. I concur with Mr. Drum. We worked hard and long yesterday to reach an opinion. I think it was a strong majority. I don't think we should have an alternative on the ballot. Let's support the majority report if we get to it, and we can confirm it then.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman. If Mr. Joyce's motion does not mean that this Convention is approving the Babcock amendment and asking the Style and Drafting to present both of them to us, then I take it that the substance of the motion is that the Style and Drafting Committee is left with the substantive decision as not to do it. In other words, if Style and Drafting decides not to present this amendment, then they simply won't bring it up. And in effect, the Style and Drafting Committee will have made the decision, that, I think, maybe this body ought to make.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. Just to make that clear—which apparently neither Mr. Murray nor I did—if the Style and Drafting Committee, after sufficient deliberation, decided that that should not be on the ballot, that there was something more important and we couldn't put everything on the ballot, it will be debated—that report will be debated in Committee of the Whole and you or anybody else can say, "I move to take something else off and put this on." or "I move to put this on in addition to what the Style and Drafting Committee has put on". So we don't make the ultimate substantive decision.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Will Mr. Schiltz yield to a question?

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: (Inaudible)

DELEGATE HARPER: Isn't that the case now, though, even if we do nothing on this amendment of Mr. Joyce—or motion of Mr. Joyce? Isn't that the case anyway?

DELEGATE SCHILTZ: I think it is.

DELEGATE HARPER: Then are you—Mr. Chairman, may I ask him one more question?

CHAIRMAN GRAYBILL: You bet.

DELEGATE HARPER: Then in effect, Mr. Schiltz, this motion of Mr. Joyce doesn't give you any prerogative you don't already have?

DELEGATE SCHILTZ: That's the way I feel.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: It seems to me—maybe I'm a little too confused; it's early in the morning—but it seems to me that what we're doing here is debating Mr. Joyce's motion, as I understand it, without having debated the merits of Mrs. Babcock's. Now, shouldn't we perhaps debate Mrs. Babcock's motion and, if it fails, then we don't have to go along with what Mr. Joyce has suggested. Now, if we go along with and debate Mr. Joyce's suggestion, then we haven't even talked about her amendment—her motion.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President. I think, really, we debated Mrs. Babcock's motion all day yesterday. As I view it, Mr. Joyce's motion merely leaves this option open. If, when we get to the end of the road of our Convention and we see how voluminous this document is and how many other things they may want or may not want to put on it, then your option is still open if you think this is a critical measure. It doesn't change anyone's mind. They can kill it then as well as today, or they can put it in; but it leaves that option open till the time when you see how big a constitution and how many other items that are going to be referred to the ballot. It leaves it open so you don't put the first item that comes along on the ballot and then that makes it so long you force off any other items when you get down the road—like gambling, capital punishment—that you might think, "Well now, one of these might be a good thing on the ballot", and I think it might. It might bring a lot of voters out if you put capital punishment on your ballot. But if you start putting them on as you go down and say, "This goes on, this doesn't go on", then you get the bottom, we got too many on there. And there might be some better ones down the road. So we've got one on now that we've all agreed on, unicameral-bicameral; I think we should stick with that. But I think we should defer any other options till we get to the end of the road and then bring them back in and check and see whether you want them or not. Now, this isn't going to change anyone's mind on this diversion or antidiversion in this body, but it's to say, "Should we present this to the voters to make them a choice?" I don't think the choice to the voters is particularly good in one of these real substantive measures because I think first they'll vote—if they really are that upset about it, they'll vote against the whole Constitution; but in case the rest of the people vote it in, then they'll take the option. But there's some other things to other people that won't be that important to—so it seems to me that we're at a real good point now to clarify our position. This is only the second thing that's come up about whether we want it on the ballot. If we put this on, it may force something else off because we've got something already on. So it seems like we should delay any decision on what other items we put on the ballot till we get through each article and then bring them back up here and say, "Now, there's a certain number of people want this on the ballot, a certain number this—let's decide whether—how many issues first we can put on it, what'll do the best good for the whole document, as a whole, both substantivewise and a certain amount, attractionwise." As I say, the death penalty could bring out a lot of voters that aren't going to vote against the Constitution but might think that they wanted to vote for or against the death penalty; or maybe the gambling—lottery issue or something like that. So I support Mr. Joyce's motion. It's not only well-taken in antidiversion, but when you get to some of these other issues, the fact that the scheduling of your arguments puts one thing before the other automatically could force off an option later on. So I think if we preserve the right to debate what goes on the ballot of substantive nature till we get all through and see how many there really are left aside. Now, we could decide whether—by vote on Mr. Joyce's motion. It's not approving or disapproving putting this on the ballot, but it just preserves the right to bring it up after you look at your whole document and see how long we've got this document; how many other problems we're presenting; how many other things that say that in your committee, there was some substantive issue that there was an option on. I can't visualize any in that perfect document on education that we've prepared, but it might be something that someone would say, "Let's put that on the ballot." Well, they'd say, "No, we've already got all the things we want on the ballot." So I think you should defer all the options to the end of the thing and then look at them each objectively and see whether we want two, three or four, and see which ones you want and which ones you don't want. And I don't think this speaks for or against the merits of Mrs. Babcock's motion, because we may have other issues that are just as crucial to the passage of the Constitution that we haven't looked at, as this particular thing. So defer it to the end and then bring it back up and see what's this going to do to our Constitution. I certainly support the motion, not only as far as this is concerned, just as a matter of anything else that will come up till we find out what you do want on the ballot.

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: Just a point of information. Does that mean that we can reopen anything that we've already adopted and redebate it?

CHAIRMAN GRAYBILL: Mr. Studer, you were up. Mr. Studer.

DELEGATE STUDER: Well I have the same—Mr. President. I really have the same question Mr. Martin had. I'd like to ask Mr. Davis.

DELEGATE DAVIS: (Inaudible)—the will of this Convention. We've gone through and we're now on our what?—seventh article. There's only one item we've said should go on the ballot, and that's been very affirmative. We agreed to that already. But I don't think there's anything else that goes on the ballot, up to today, and anything that anybody wants on it afterward should be deferred to the end, and then we can weigh the respective merits. In other words, what if someone in the next article wants something; then, in the last article, there's something that's real important, but we've already got the ballot watered down with so many issues for the voters that we know it wouldn't be acceptable. I don't think we can go back past today and bring anything up. We've got this far.

DELEGATE STUDER: Mr. President.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Will you yield to another question?

DELEGATE DAVIS: (Inaudible)

DELEGATE STUDER: If we pass this revenue and measure as a whole and adopt it, how are we going to get Mrs. Babcock's proposal back in here if we don't work—vote on it now?

DELEGATE DAVIS: Well, Mr. Joyce's motion—I think we're—I think we have to adopt Section 6, and then we will decide, if his motion sets this aside, to defer consideration of whether this should be on the ballot as a secondary option. Now, we haven't done that with anything so far except bicameral-unicameral, but there may be other things down the road, is my only argument. Your right to work, for instance. You're going to say, "Well, let's put that on the ballot". Then we'll take that death penalty and whatever else and we'll say, "Well, now, how many of these, if any, do we want on the ballot?" and then everybody vote on the whole thing at the end.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Mr. President, could I ask another question?

CHAIRMAN GRAYBILL: Yes.

DELEGATE STUDER: How am I assured that I can put that on? Our rules say that when we pass this section and finally adopt it, it's finally adopted. Style and Drafting doesn't have veto power over Mrs. Babcock's proposal, does it?

DELEGATE DAVIS: Absolutely not, but when you get to your issue, if you make a motion that you defer this with the right to put it on the ballot, if your motion prevails, then it would be weighed. If Mr. Joyce's motion doesn't prevail, then we'll kick it in or out today, as whether it should go on the ballot. That would be—I think you can put—bring something back up by suspending the rules, I suppose, at any time. But, as to this point, there's this only one issue.

DELEGATE STUDER: Could I ask another question to clear this up, Mr. Davis?

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Mr. President. You say we can suspend the rules, but that takes a vote to suspend the rules, doesn't it?

DELEGATE DAVIS: Absolutely.

DELEGATE STUDER: And you have to have a majority vote to suspend it. So if they don't suspend the rules, we dropped this alternative that Mrs. Babcock wants on here, without having voted on it at all.

DELEGATE DAVIS: Well, Mr.—the sense of Mr. Joyce's motion is to send this to Style and Drafting and delay taking action on it today, as to whether it would go on the ballot or not; then when it comes back up, we would vote. And my thought would be that we would vote on it, whether it goes on the ballot, together with any additional things as we progress through this next two weeks of debate, whether they go on the ballot.

DELEGATE STUDER: Mr. President.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: I believe Mr.—that Mrs. Babcock's proposal is the answer to the problem. People do get a choice in a clear-cut way with her alternative. Yesterday we had your alternative on the floor—it was going to be an alternative, but it has since been withdrawn. Time shouldn't really preclude this from being considered, really. Style and Drafting does not have the veto power, I don't believe, to drop an alternative. I'd go for Joyce's proposal to commit to Style and Drafting the Babcock alternative, for form only.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: To get back to my confusion, how can we vote on Mr. Joyce's suggestion to put something that Mrs. Babcock has brought up to Style and Drafting, when we don't even have the other alternative voted on yet? I think—it seems to me that Mr. Joyce should withdraw his motion at this point and that if we're going to get 6 in there, we vote on 6. And then we decide on whether we're going to have Mrs. Babcock's as an alternative, and then we can send it to Style and Drafting.

CHAIRMAN GRAYBILL: Mrs. Bugbee.

DELEGATE BUGBEE: Mr. Chairman, may I ask you a question?

CHAIRMAN GRAYBILL: Yes.

DELEGATE BUGBEE: I think that part of the confusion is when we talk about alternatives, at least in my mind, that we don't know whether these are going to be two alternatives off on the side—say, unicameral and bicameral—or whether we're going to vote on unicameral and bicameral in this body and decide to put the majority vote into the body and then the other off on the side. This is my confusion in this. Is it going to go off as two alternatives, or is the majority vote going to get it into the body of the Constitution with one alternative? Could you clarify that?

CHAIRMAN GRAYBILL: Well, I'll try, Mrs. Bugbee. Let's forget about the issue of this particular matter being referred, because this matter has come up several times. We all know that bicameral-unicameral has been referred in dual nature to the Style and Drafting Committee. Now, the Style Committee becomes a substantive committee for purposes of proposing a ballot. And it will propose a ballot form to us as it sees fit, after having gotten the unicameral-bicameral thing presented to it. Then it will make that recommendation, and then we will debate that recommendation. Now, that's the sense of what Mr. Schiltz has been saying. There are, however, a lot of different ways that things can go on the ballot. The A-B alternative is one way; putting something into the Constitution with an alternative to the side that would take it out is another way; putting something in the Constitution with a Yes-No on that issue only is a third way. There are a lot of different ways, and we do not have to use the same way on all issues. And some issues lend themselves to different methods of putting them on the ballot. But the point is that all this body has to do is to decide if it wants something on the ballot. And when it does, this body can then give it to Style and Drafting, who will put it in a form. If we don't agree with the form, we may amend it and debate it on the floor. But the thing that Style and Drafting wants to know is, are we suggesting to them that it be on the ballot, or are we not? And I think part of the problem here is that—on the motion before us at the moment is that we're not sure that we're telling them to do it or we're not telling them to do it. But maybe that's fine, too. I'm not going to try to change your motions. I don't know if I've answered your question, but the point is that Style and Drafting is a substantive committee for the purposes of suggesting a ballot. And if Style and Drafting wanted to, it could make everything in the Constitution an alternative on the ballot, and we would go down through and, I suppose, vote them down. But, in other words, they have an absolute right to suggest a ballot form.

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. In—my efforts to resolve this matter procedurally and to satisfy Mr. Schiltz about not making the decision prematurely, I see, have been in vain. I withdraw my motion.

CHAIRMAN GRAYBILL: Very well. Mr. Joyce's motion is withdrawn. We're now debating Mrs. Babcock's motion that—that Section—and alternative Section 6 be added on the ballot.

Mrs. Eck.

DELEGATE ECK: Mr. Chairman. I rise, too, for information. It was my impression that we did pass Number 6 as proposed by the committee yesterday. Now, am I wrong on that?

CHAIRMAN GRAYBILL: We, by voice vote, made it the sense of the Convention. We did not make the motion that moves it on into the Convention when this body does arise and report. So it's still open for amendment. If anybody—we didn't finalize it, let's put it that way.

DELEGATE ECK: Thank you.

CHAIRMAN GRAYBILL: Mr. Joyce—Mr. James, you've been up several times.

DELEGATE JAMES: Thank you. Mr. Chairman, fellow delegates. I've been thinking about this all evening, and in reading Article IV of the old Constitution and the first article in the General Government's section of our proposed Constitution, I see that the power of the government of this state are divided into three distinct departments: Legislative, Executive and Judicial. It says nothing about Highway Department. Now, the thing that bothers me here is, we elect these state officers as a check on the Governor. We feel the Governor's powers shouldn't be too extensive, so we've retained all these elective offices to act as a check. In the Judicial Article, we're having our judges return for confirmation by the electorate. Again, with the Governor, we've given the Legislature new power to override his veto. With the Legislature, of course, there's the government [governor's] veto. All these powers have a check on them. Now, if we adopt other proposals rather than the committee proposal—I would like to ask a question of Mrs. Babcock. What power do we have over the Highway Department if we remove the Legislative veto, you might say? Mrs. Babcock, will you answer that one?

DELEGATE BABCOCK: I'm sorry, I can't answer that.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President. I think this whole issue comes down to one thing—from the majority committee report, which I support—is to whether the Highway Department of the State of Montana will be answerable in these legislative halls to our committees. Now, I've heard through the years—I've talked to people who have served up here in the State Legislature and have come back home and they've been extremely bitter. They say they have gone over to the Highway Department; they have tried to get information; they have been treated with arrogance; they have been told, in effect, that it's none of their business. And if I might recall just one incident to your mind. I remember, some three or four years ago, that there was finally a Conference Committee put together, of Senators and Representatives, of the Highway Committees to go over and talk to the people in the Highway Department. And I believe, as I remember, Elmer Schye was the Chairman of that committee. They got over there, and it was reported in the newspapers that the people, the highway engineers, said to that committee, "We don't have to answer to you". And Elmer Schye, God bless him, pounded the table and said, "You will answer". But there is nothing under this Section 1(b) that seems to me to make the Highway Department answerable to the people of the State of Montana that serve in these halls. And I think that the majority committee—after all, if you look at these people that are on this committee, they're certainly not wild-eyed radicals (Laughter); they're pretty conservative people. They thought about this. They listened to all the testimony. I think they came up with a good committee report. I can't see why we should go back to the old section when these people have looked it over; they feel that this will serve the people of Montana well; they have written in what I think is a fair safeguard, this three-fifths before they can get any money out of here for these other purposes; and I believe that it's a sound committee report. I support it, and I believe that we should support the majority committee all the way on this.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President. I submit to this Convention that the powers of the Legislature are sufficient, that they can do anything that they want to with the Highway Department, if there's enough people in the Legislative session that decide to do this. It takes a majority of the Legislature to do it, and they can do. They have that authority. The Legislative Assembly of the State of Montana has the power to do anything they want to if the majority so votes. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Will Mr. Wilson yield to a question?

CHAIRMAN GRAYBILL: Mr. Wilson?

DELEGATE WILSON: Yes, sir.

DELEGATE TOOLE: Can you tell me how the Legislature can take $38 million away from the Highway Department?

DELEGATE WILSON: Take $38 million away from them?

DELEGATE TOOLE: Under Section 1(b)?

DELEGATE WILSON: The Legislature has the authority to tell the Highway Department what they can do.

DELEGATE TOOLE: They do not, sir. I beg your pardon, Mr. Chairman. They do not, sir. They cannot do anything with that $38 million that is force-fed into the Highway Department. The Legislature has no control over that $38 million, nor do the people of the State of Montana.

CHAIRMAN GRAYBILL: Thank you, Mr. Wilson and Mr. Toole.

Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman. If Delegate Wilson is correct, and I hope he is, then there should be no objection by anyone to the majority report.

CHAIRMAN GRAYBILL: Mr. Champoux, do you feel better now?

DELEGATE CHAMPOUX: Not yet, no siree. And I'm not arguing either point here. I haven't—I didn't stand up yesterday at all. I'm not arguing either position. However, is it my understanding—at this point, at least, I feel this—and I'm directing this question to you, Mr. President—that we are now voting on whether we're going to put this on the ballot or whether—are we going to be debating the merits of Mrs. Babcock's motion?

CHAIRMAN GRAYBILL: Mrs. Babcock's motion is, "I move to add as an alternative on the ballot the following Section 6". Then she has the modified 1(b) language.

DELEGATE CHAMPOUX: Then is it your understanding that we are, at this point, not only debating the merits of Mrs. Babcock's proposal, but also whether it goes on the ballot as an alternative, sir?

CHAIRMAN GRAYBILL: Her motion directs that she wants it added as an alternative on the ballot. That's right.

Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman. The idea of the antidiversion amendment is well sold to the people and was placed in the present Constitution by the people. To me, a vote of the people is safer and should be respected. And if the people want to change their minds, let's give them the alternative. Having served in these chambers three sessions of the Legislature, I sincerely feel that three-fifths vote of the Legislative—Legislature is small protection for our highway funds. I've suffered through a special session, and we all know the history of the last two sessions, which were deadlocked because of disagreement over financing. Human nature being what it is, my observation as a member of the Legislative body is that a percentage of the body will move in the line of the least resistance. And I would predict that if a financial deadlock develops again, the signs point loud and clear to the highway funds; and the pressure to make a raid on the gas taxes will be irresistible. Twenty years from now, when we've completed our road work, I would support loosening the highway funds to other uses. So I support Betty Babcock's proposal.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman. The people of 1956 changed their minds and sent me up here. I oppose the amendment and I support the majority.

CHAIRMAN GRAYBILL: Mr. Barnard.

DELEGATE BARNARD: Mr. President. I rise in support of Mrs. Babcock's motion to put Section 1(b) on the ballot as a substitute. I served in the Montana Legislature since, I think, 1945. I remember when—I believe we even voted bonds to build roads to get ourselves out of the mud. At that time the Highway Department didn't have money enough. Today they don't have money enough to keep their construction system going like it should be. That's the reason a lot of these people are hollering for roads and they don't get them. You also should remember that the Legislature has established priorities for the use of this money in all of the various areas; the interstate, the primary and the farm-to-market. And you have to—the Highway Department has to live with those. I agree that there have been times when some members of the Highway Department have been rather rude to delegates that have visited with them, but I have never been to the Highway Department on a request for information that I didn't get a very courteous reply and ample time and explanation of all the things I asked for. And again, I would like to tell you, as I told you yesterday, if you vote for this—if this Proposal Number 6 goes on the ballot and the people have no choice, that within four years' time, your Highway Department construction will be cut in half. I've been in the Legislature and I know how close, many times that the funds that were available to the Highway Department have come to being taken away. And I know the temptations that are going to be before the Legislature, and so I certainly am [in] agreement with Mr. Etchart's statements and hope you support Mrs. Babcock's motion.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. President, fellow delegates. I would like to speak first to the point that Delegate Etchart raised in regard to the vote of the people sustaining, in 1955, the antidiversion amendment. But I wish to call your attention to another point: that in 1967, the majority of the people overruled allowing six amendments to the Constitution on one ballot. In the Legislative Article, we have overruled that decision. In 1967 the people of Montana voted against allowing 80 legislative days in the Constitution, and we have overruled that. And also, in 1961, there were 80,000 people on a very close vote that voted that, in fact, they did not want Justices of the Peace in the Constitution, and in fact, we have retained the Justices of the Peace. So I submit that the previous history of amendments to the Constitution is not our purpose here. We have to decide on the merit of the issue. And I suggest that the merit of retaining the antidiversion amendment as it exists now in the Constitution is not warranted. In fact, in the Bill of Rights Committee, a representative of the Highway Department—a lawyer, Mr. Ron [Don] Douglas—stated that, in fact, he felt that the antidiversion amendment should not be in the Constitution. I think that in the course of this debate we've seen very clearly that the antidiversion amendment does not belong in the Constitution, and we've seen very clearly that the committee that has worked so hard on this has done an excellent job. They presented us an excellent proposition to make the Highway Department responsive and also to give them a little bit of extra protection. Now, I submit that the highway users, the people that are concerned about our highway money, when we give them 10 extra votes in the Legislature, they can take all of that good effort, all that good representation that they've had here, they can take that same ability to present their case to the Legislature, and with those 10 extra votes, they certainly ought to be able to take care of the highways. Now, the point that many raise is that we're going to lose our good roads in the rural areas, we're not going to get the city streets taken care of. And I submit that the history of the Highway Department has been that, in fact, we haven't gotten that in the past. And it seems to me that the proposal of the majority is going to make them more responsive, will use our money better, and, in fact, we'll be a lot better off. And I resist the motion of Mrs. Babcock. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rollins.

DELEGATE ROLLINS: Mr. President. I'm concerned about three things. One is immediate; that's the peace of mind and well-being of Rick Champoux. (Laughter) He's perturbed. We can end that by voting down this amendment. Mr. Etchart has joined the ranks of the prophets predicting, with great certainty, that the Legislative—Legislature will fall prey to the temptations of easy money. I'm not sure that he can prove the moral qualities of that next Legislature. Mr. Barnard becomes a Cassandra and says that if such things happen, dire consequences will occur in the future. I don't know where all of these occult powers come from. I'm not going to prophesy anything, although I think I'm the only Mormon here. (Laughter) I'm here to help write a Constitution. I oppose past alternatives and any present alternatives that come. In my opinion, the people should have one choice, the Constitution we write, as opposed to the Constitution they now have. I urge that you vote down Mrs. Babcock's amendment.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman. I waited all day yesterday, I waited all this morning for the people that claim that labor elected them here to come to the support of labor. Now, I don't think that labor, per se, elected me; the people in District 6 elected me. Sometimes I'm sure that the people that belong to unions there probably don't think I should be up here, but now I think I'm going to have to come to their rescue. It seems like the many people that have been accused of being elected by labor and sold them out—I'm not going to accuse them of that, but I just can't understand. Now, here's in the Montana branch of the International Union of Operating Engineers, 4,900 of them, say that if antidiversion clauses change, the state will lose millions of dollars in federal matching funds. Montana does not have the available matching funds. The federal funds for the fiscal year are lost forever. I think Mr. Mahoney touched on this pretty heavily. Many jobs would be lost if they don't have their matching funds, which they can get if the state has funds. Now, they have 4,900 members, apparently. Montana AFL-CIO has many, many more members than that. In their letter to all of the delegates—I'm sure it did; it was addressed to the President—I'm sure they all got it—"Section 6. Highway antidiversion. This section, in its present form, is not acceptable because it does not provide the adequate safeguards against diversion of highway fuel taxes and other revenues by the Legislature." Now why in the world can't we accept Mrs. Babcock's amendment, put this on the ballot, let these people have an opportunity to vote on it? I don't see why this is not important enough, if unicameralism is important enough, to put on the ballot. It seems to me with this many people in the State of Montana that are opposed to this as it comes out of the majority report. Now, I don't know whether I agree with the majority report wholeheartedly, or disagree. I don't think I have too much feeling, but I certainly think when this many people take a stand, that we ought to recognize it. It has been said a thousand times here that this is a people's convention. So let's recognize the people and let them vote on something where we have a clear-cut chance to do it, and quit this fooling around trying to lock something in that somebody thinks it ought to have. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. Mr. Conover.

DELEGATE CONOVER: Mr. President. I came here, I got elected on the basis that if I could do something with the bureaucracy in our state government. And I want to say to you: you're all talking here, a few of you, that the Highway Department is going to run out of money, they're going to take their money. I'm not afraid of the Legislature taking the Highway's money; I'm afraid of the Highway getting into the Legislature's pocket. Just remember last session. What did the Highway Department do? They wanted a $6 million building. And let me clue you here again: if they got that kind of money to build a building, look out for next year; they'll be right back after it again. And I'm saying to you that you—that your—it's going to come out of your pocket and my pocket. And I'm going to put this little plug in just for myself—ourselves. We're sitting with a little back-house back here for agriculture; we're not griping.

CHAIRMAN GRAYBILL: Very well. The issue is on Mrs. Babcock's proposal this morning that she—that we add, as an alternative on the ballot, language similar to 1(b). Does anyone want the language read?

Mr. Kelleher.

DELEGATE KELLEHER: Will Mrs. Babcock yield to a question?

CHAIRMAN GRAYBILL: Mrs. Babcock?

DELEGATE BABCOCK: Yes, sir.

DELEGATE KELLEHER: The last few words, "as authorized by the Legislative Assembly"; I'd just like to know whether they apply to all three phrases following the verbs "shall be used". You'll note that it's broken down into three parts: for expenditures for the public highways; and then the second group, for county, city and town obligations; and then the third group, for statutory refunds. Would the words "as authorized by the Legislative Assembly", Betty, apply to all three groupings?

DELEGATE BABCOCK: Yes.

DELEGATE KELLEHER: Thank you.

DELEGATE BABCOCK: May I close, Mr. Chairman?

CHAIRMAN GRAYBILL: Mr. Wilson, Mrs. Babcock is going to close. Do you want to speak first?

Mr. Wilson.

DELEGATE WILSON: Mr. President. Since I was challenged by Mr. Toole about the effect the Legislature might have on the Highway Department as such, I believe if you will read very carefully Mrs. Babcock's suggested amendment, that this is taken care of there. It refers to all of the section that such costs will be authorized by the Legislative Assembly.

CHAIRMAN GRAYBILL: Mrs. Babcock.

DELEGATE CHAMPOUX: Mr. President.

CHAIRMAN GRAYBILL: Just a moment.

Mr. Champoux.

DELEGATE CHAMPOUX: I'm still confused. Now, have we voted in Section 6, sir?

CHAIRMAN GRAYBILL: No.

DELEGATE CHAMPOUX: Now, what we're doing here with this vote, then, is voting in an alternative when we don't have an alternative to match it with. Is that correct?

CHAIRMAN GRAYBILL: Are you addressing the Chair?

DELEGATE CHAMPOUX: Yes, sir.

CHAIRMAN GRAYBILL: Well, we have Section 6's language proposed, and then we have this amendment proposed. And this amendment is proposed as an alternative to it, rather than as a substitute for it. Does that help you?

DELEGATE CHAMPOUX: Could it be possible, then, that we vote this in and we don't get Section 6 as the alternative?

CHAIRMAN GRAYBILL: Well, I hesitate to say what's possible and not possible here. (Laughter)

DELEGATE CHAMPOUX: Yes, I can see that. (Laughter)

CHAIRMAN GRAYBILL: Mr. Champoux, all I know is that if we do what Mrs. Babcock asked, it's to be as an alternative.

DELEGATE CHAMPOUX: To what?

CHAIRMAN GRAYBILL: To whatever else we adopt for Section 6.

DELEGATE CHAMPOUX: If we adopt Section 6.

CHAIRMAN GRAYBILL: Right.

DELEGATE CHAMPOUX: Thank you, sir.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: I'd like to direct a question to Mrs. Babcock.

DELEGATE BABCOCK: Yes, ma'am.

DELEGATE ECK: In keeping with the idea that highway moneys—moneys that we derive from the use of the automobile on our roads—should be spent for those uses, I wonder if you would be able to add—willing to add, say, down after "tourist promotion", another phrase, "and the alleviation of problems attendant to the use of the automobile".

DELEGATE BABCOCK: Which would—in other words, we'll go into the environmental issue, huh?

DELEGATE ECK: Well, those environmental problems that are attendant to the use of the automobile, which could be used car bodies. No, we didn't really want to see that written in the—it could be in cities, it could be air pollution problems.

DELEGATE BABCOCK: I wouldn't be agreeable to writing that in, but I certainly would be agreeable to soliciting the help of the people that are for this amendment to work on the environmental issue, if this passes.

DELEGATE ECK: Thank you. I will not try to amend the motion, Mr. Chairman.

DELEGATE BERTHELSON: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berthelson.

DELEGATE BERTHELSON: May I address a question to Mr. Schiltz? Would you yield to a question?

DELEGATE SCHILTZ: I yield.

DELEGATE BERTHELSON: Mr. Schiltz, I'm trying to clear up a misunderstanding here as to what the last five words in Betty Babcock's motion refers to, "as authorized by the Legislative Assembly". Mr. Wilson says those words apply to everything said above. I contend they apply only to administrative and collection costs as authorized by the Legislative Assembly. Would you—

DELEGATE SCHILTZ: Mr. Berthelson, I would refer you to some member of the committee who has studied this in more depth than I have. But I suspect your version is the version.

DELEGATE BERTHELSON: I suspect that I'm right. (Laughter)

CHAIRMAN GRAYBILL: Mr. Siderius.

DELEGATE SIDERIUS: There was a statement made yesterday, I think, that should be cleared up a little. Mrs. Babcock made the statement that if this majority proposal was accepted, the Farmers Union would vote against the whole Constitution. Now, I inquired into that, and I can find no one who has made that statement. There might have been one member, but Farmers Union as a whole has not made that statement.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: Mr. President. I would make the same remarks that Mr. Siderius made with reference to the AFL-CIO.

CHAIRMAN GRAYBILL: Mr. Simon.

DELEGATE SIMON: Mr. Chairman. What confuses me is what Mr. Champoux is confused about. If we vote on Betty Babcock's motion, that does not necessarily say that I'm voting against Number 6. I'm not—as I understand it, Number 6 could be put on the ballot, this could also be put on the ballot. And in voting for this amendment of Betty Babcock's, it is simply giving the people a choice; it's not necessarily saying that I'm voting against Number 6. Am I not right, Betty?

CHAIRMAN GRAYBILL: Mrs. Babcock, will you yield?

DELEGATE BABCOCK: (Inaudible)

DELEGATE SIMON: Am I correct that if I vote for your amendment, that I'm not particularly voting for Number 6 but I am voting for two choices for the people?

DELEGATE BABCOCK: Yes, providing that—I'd like to ask a question now of Mr. Davis.

CHAIRMAN GRAYBILL: Wait a minute, wait a minute, Mrs. Babcock. Mr. Simon has the—your answer is Yes. And Mr. Simon, you have the floor.

DELEGATE SIMON: Well, that was what I was trying to clear up. I think we're talking—we are really making the choice of putting both on the ballot. I would like to clear up one other point, if I might ask my good friend down here, Dr. Rollins, one question.

CHAIRMAN GRAYBILL: Mr. Rollins?

DELEGATE ROLLINS: I yield.

DELEGATE SIMON: I'm not quarreling with you; I'm just asking the question. In your statement, you said that you would write a constitution and give it to the people in one chunk at one time. Are you saying, then, that we should take out unicameral and bicameral and only vote on one?

CHAIRMAN GRAYBILL: Mr. Simon, that's not a relevant question. I'm going to rule it out of order. We're debating a different matter.

DELEGATE SIMON: Thank you, sir.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Mr. President. I just wanted to clear up—Dr. Rollins talked, a minute ago, about not wanting an alternative on. There are certain things that we do have to have—a real controversial issue—that we should have alternatives. But if we proceeded on his theory, or thesis, that we don't have one, we're certainly getting a real alternative. We're putting this to the people where the "againers"—and people are inclined to vote against things; if they don't like them, they vote against them. We'll have a lot of controversial issues in here. If there's no alternatives, they'll vote against this proposal as against taking the old one. That's the most risky alternative we have yet.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. Chairman. Very briefly, I'd like to restate my concern of taking the action of endorsing Mrs. Babcock's proposal. It would then become the alternative. And again I say, there may be other alternatives. If you look at our—I'm not suggesting it, but maybe another alternative would be to make the last line of Section 6 an alternative, because everything above that is substantially the same as Mrs. Babcock's. But this, I believe, should come up as a suggestion from the Style and Drafting people at a later time. And the Convention can act as a body, and if 51 percent of the people here feel that it is a problem at that time, I'm certain we can suspend the rules and go ahead and proceed along those lines.

CHAIRMAN GRAYBILL: Mrs. Mansfield was up.

DELEGATE MANSFIELD: Mr. President. I am also opposed to earmarking, but as I read the Constitution as in our (Inaudible)—it says "authorized by the State Legislature". And I believe that I will stick with the majority report. As I understand that, in the past, the Highway Department has been very dictatorial. And in giving them this vote, I think it should be three-fourths; but that's another thing. I believe that we can put our finger down on the Highway Department, because just stating in Mrs. Babcock's, "authorized by the State Legislature", I don't think they'll have too much power. Thank you.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman, a point of information here. Is this amendment of Mrs. Babcock's open now for more amendments, or are we just discussing the possibility of putting this as an alternative measure or proposal?

CHAIRMAN GRAYBILL: No, everything's open for amendment always.

DELEGATE BATES: Okay, I have an amendment here. I have a copy here. Could you take it up to the Chair please? Mr. Chairman, I move that we add to Mrs. Babcock's proposal, "If these funds are no longer needed for the above purposes, then the Legislature must reduce the highway users' taxes".

CHAIRMAN GRAYBILL: Mrs. Bates, have you got that reduced to writing?

DELEGATE BATES: Yes, I have. I just passed it up.

CHAIRMAN GRAYBILL: Would you send it up. I see. I have it here.

DELEGATE BATES: Mr. Chairman, may I speak on this?

CHAIRMAN GRAYBILL: Just a moment. Mrs. Bates proposes an amendment to Mrs. Babcock's language by adding a sentence at the end. It says, "If the above funds are no longer needed for the above purposes, the Legislature must reduce the highway users' taxes."

Mrs. Bates.

DELEGATE BATES: Mr. Chairman. In talking to several people that feel very strongly about these taxes and these revenue measures that are used for highways, and they feel they must be used for these and should not be diverted. And in order to have good roads, I think we need this money. But rather than divert it to another purpose from which the tax was intended, I feel that this would be a safeguard. And it would not be a sales tax, as our gas tax now is, for other purposes. Thank you.

CHAIRMAN GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman. I rise in opposition to this amendment. Building highways is a long-range program and you can't one minute have—hire engineers and not have any roads to build and the next minute have engineers and do just the opposite. Highways are an important umbilical cord to the other states of this nation. We—and here in Montana, we have a particular road situation. Montana is no ordinary state. It's 600 miles across. We have hot and cold weather and that makes a highway building problem. We have a mountainous area. We have to have a long-range building fund for highways. Therefore, I oppose this motion.

CHAIRMAN GRAYBILL: Very well. The issue is on Mrs. Bates' motion to add a sentence to the end of Mrs. Babcock's language: "If the above funds are no longer needed for the above purposes, then the Legislature must reduce the highway users' tax." So many as shall be in favor of that amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it; it's defeated. We're back to discussing Mrs. Babcock's amendment. Mrs. Babcock, are you ready to close?

DELEGATE BABCOCK: Yes, Mr. President. I would just like to remind the delegates that the people that have advocated this are not stray souls that have wandered in from North Dakota. They are citizens of Montana. They want to work for the Constitution. They want us to have a good highway program, and they want us to have a good Constitution. I would like to also remind you that in voting for this proposal, you can still vote for Section 6 later. And I very much urge you to vote for this proposal. Thank you.

CHAIRMAN GRAYBILL: Very well. Mrs. Babcock's motion is to add, as an alternative to the language that the committee has come up with for Section 6, the language that's before you. I don't suppose I need to read it. Do you want a roll call vote?

DELEGATES: Yes.

CHAIRMAN GRAYBILL: Very well. So many as shall be in favor, vote Aye on the voting machines; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the vote.

Aasheim	Aye
Anderson, J.	Aye
Anderson, O.	Absent
Arbanas	Absent
Arness	Nay

Aronow	Aye
Artz	Nay
Ask	Absent
Babcock	Aye
Barnard	Aye
Bates	Nay
Belcher	Absent
Berg	Nay
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Absent
Brazier	Absent
Brown	Nay
Bugbee	Aye
Burkhardt	Aye
Cain	Aye
Campbell	Nay
Cate	Nay
Champoux	Nay
Choate	Aye
Conover	Nay
Cross	Nay
Dahood	Nay
Davis	Aye
Delaney	Aye
Driscoll	Nay
Drum	Nay
Eck	Nay
Erdmann	Aye
Eskildsen	Absent
Etchart	Aye
Felt	Absent
Foster	Nay
Furlong	Nay
Garlington	Aye
Graybill	Nay
Gysler	Nay
Habedank	Aye
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Nay
Harlow	Nay
Harper	Nay
Harrington	Nay
Heliker	Nay
Holland	Excused
Jacobsen	Nay
James	Nay
Johnson	Aye
Joyce	Nay
Kamhoot	Aye
Kelleher	Nay
Leuthold	Aye
Loendorf	Nay
Lorello	Nay
Mahoney	Nay
Mansfield	Nay
Martin	Nay
McCarvel	Nay
McDonough	Nay
McKeon	Nay
McNeil	Nay
Melvin	Nay
Monroe	Nay
Murray	Aye
Noble	Aye
Nutting	Aye
Payne	Nay
Pemberton	Aye
Rebal	Nay
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	Aye
Rygg	Nay
Scanlin	Nay
Schiltz	Nay
Siderius	Nay
Simon	Aye
Skari	Nay
Sparks	Nay
Speer	Nay
Studer	Aye
Sullivan	Absent
Swanberg	Aye
Toole	Nay
Van Buskirk	Nay
Vermillion	Nay
Wagner	Nay
Ward	Aye
Warden	Nay
Wilson	Aye
Woodmansey	Nay

CLERK SMITH: Mr. Chairman, 30 voting Aye, 60 voting No.

CHAIRMAN GRAYBILL: 60 having voted No and 30 Aye, the motion fails.

Mr. McDonough.

DELEGATE McDONOUGH: Mr. Chairman.

CHAIRMAN GRAYBILL: You have an amendment. Do you want the clerk to read it?

DELEGATE McDONOUGH: Yes, Mr. President.

CHAIRMAN GRAYBILL: Will the clerk read the amendment of Mr. McDonough's to Section 6.

CLERK SMITH: "Mr. Chairman. I move to amend Section 6, on page 12, line 10, of the Revenue and Finance Committee proposal, after the word 'for', by adding the following: 'statutory refunds and adjustments'. Signed: McDonough."

CHAIRMAN GRAYBILL: Very well. If you'll take your books and look at page 12, on line 10. The sense of Mr. McDonough's amendment is to add, on line 10, after the word "for", four words: "statutory refunds and adjustments". So that the line reads—so that the phrase reads: "After the deduction of funds for statutory refunds and adjustments, enforcement"—"enforcement—of highway safety, driver's education", et cetera.

Mr. McDonough.

DELEGATE McDONOUGH: This will be short, Mr. President. We thought originally by the wording of taxes on fuels actually used on the highway, that there would be no questions about it—refunds and adjustments. But the question has arose, and therefore we want to specifically put in here that the fuels are not used propelling motor vehicles down a highway, they certainly can be refunded and adjusted. This is made on behalf of myself and the committee.

CHAIRMAN GRAYBILL: Very well. Mr. McDonough's amendment has the effect of adding the words "statutory refunds and adjustments" to take care of the situation where fuel tax is on nonhighway use. Is there any discussion? All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: Mr. Rygg, would you care to restate the motion?

DELEGATE RYGG: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 6 of Proposal 7, that [it] recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: Very well. You have before you, members of the committee, Mr. Rygg's motion that when this committee does arise and report, after having had under consideration Section 6 of the Revenue and Finance Proposal, that this committee recommend the same do pass. So many as shall be in favor, say Aye. Wait a minute. Do you want a roll call? Very well; roll call vote. So many as shall be in favor, vote Aye on the voting machines; so many as are opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Do any delegates wish to change their vote?

(No response)

CHAIRMAN GRAYBILL: Clerk will take the ballot.

Aasheim	Nay
Anderson, J.	Aye
Anderson, O.	Aye
Arbanas	Excused
Arness	Aye
Aronow	Nay
Artz	Aye
Ask	Aye
Babcock	Nay
Barnard	Absent
Bates	Aye
Belcher	Excused
Berg	Aye
Berthelson	Aye
Blaylock	Aye
Blend	Aye
Bowman	Aye
Brazier	Absent
Brown	Aye
Bugbee	Aye
Burkhardt	Aye
Cain	Aye
Campbell	Aye
Cate	Aye
Champoux	Aye
Choate	Nay
Conover	Aye
Cross	Aye
Dahood	Aye
Davis	Absent
Delaney	Aye
Driscoll	Aye
Drum	Aye
Eck	Aye
Erdmann	Nay
Eskildsen	Excused
Etchart	Absent
Felt	Excused
Foster	Aye
Furlong	Aye

Garlington	Aye
Graybill	Aye
Gysler	Aye
Habedank	Aye
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Aye
Harlow	Aye
Harper	Aye
Harrington	Aye
Heliker	Aye
Holland	Excused
Jacobsen	Aye
James	Aye
Johnson	Nay
Joyce	Aye
Kamhoot	Nay
Kelleher	Aye
Leuthold	Aye
Loendorf	Aye
Lorello	Aye
Mahoney	Nay
Mansfield	Nay
Martin	Aye
McCarvel	Aye
McDonough	Aye
McKeon	Aye
McNeil	Aye
Melvin	Aye
Monroe	Aye
Murray	Aye
Noble	Aye
Nutting	Nay
Payne	Aye
Pemberton	Aye
Rebal	Aye
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Aye
Romney	Aye
Rygg	Aye
Scanlin	Absent
Schiltz	Aye
Siderius	Aye
Simon	Nay
Skari	Aye
Sparks	Aye
Speer	Aye
Studer	Nay
Sullivan	Aye
Swanberg	Nay
Toole	Aye
Van Buskirk	Aye
Vermillion	Aye
Wagner	Aye
Ward	Aye
Warden	Aye
Wilson	Nay
Woodmansey	Aye

CLERK SMITH: Mr. Chairman, 76 voting Aye, 14 voting No.

CHAIRMAN GRAYBILL: 76 having voted Aye and 14 having voted No, Section 6, as amended, of the committee proposal is adopted. Will the clerk please read Section 7 in its entirety. Just a moment.

Mrs. Van Buskirk, for what purpose do you rise?

DELEGATE VAN BUSKIRK: Mr. Chairman. I'd like to express my feelings that I feel real proud of this group, that we're representing Montana.

CHAIRMAN GRAYBILL: Very well. All right, now the clerk will read Section 7.

Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I wonder if it would speed up anything. I'm going to move to amend Section 7 by deleting it in its entirety and to supply the material which is on your desk. Now, I don't know if he still must read it or not, but I do plan to move to amend it by deleting it in its entirety and substituting the short amendment, which should be on your desks.

CHAIRMAN GRAYBILL: Mr. Rygg, the Chair and the clerk did not receive your material—or at least the Chair didn't. Very well, may I have your attention? The Chair will ask if there's any objection if we do not read Section 7 of the committee report and allow the amendment without reading that page and a half of material. Is there anyone [who] objects? Very well. Hearing no objection, Mr. Rygg, may the Chair direct the clerk to read your amendment to Section 7?

DELEGATE RYGG: Do, sir.

CHAIRMAN GRAYBILL: Very well. Please read the amendment.

CLERK SMITH: "Mr. Chairman. I move to amend Section 7 of the Revenue and Finance Committee majority report, starting on line 17 of page 12 through and including line 3 on page 14, by deleting the material contained therein and inserting in lieu thereof the following new material: 'Section 7. Tax appeals. The Legislature shall provide taxpayer independent appeal procedures for appraisals, assessments and equalization grievances and tax grievances. The Legislature shall include therein a review procedure at the county or local governmental unit level.' Signed: Rygg."

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman. I suppose all you committees probably had the same trouble we did in meeting our deadline. And about 11 o'clock one night, we were still wrestling with this section. We did have quite an involved section. At the time, there were some of us on the committee who felt that perhaps this was too involved and really too much of a legislative article to be contained in the Constitution. However, because of the lateness of the hour and the nearness of the deadline, we did feel that we had to submit it. Since then, we have met on several occasions and discussed this particular section. We are not changing our concept at all, because we think that this concept of establishing independent tax review is something that is needed. Under the present tax administration program, the same governmental bodies—that is, the County Boards of Equalization and the State Boards of Equalization—that establish the revenue policies and procedures then also sit in judgment when a person wants to appeal the implementation of these policies and procedures. The testimony heard during the past few weeks indicates this procedure does not guarantee an independent, nonpartial, objective review of tax decisions. The committee feels that the Montana taxpayer needs some avenue of recourse, besides the tax administrators or the courts, to evaluate his tax treatment. We feel this new proposed section will enable the Legislature to set up the proper machinery at a local level and give the taxpayer an independent body to which he can appeal. Again I say, we thought we had spelled it out in too much detail. We had to provide for five; maybe they don't need that many. We are very interested in having it on the local level. And we feel that the Legislature is the only one that can do this. Now, it is the thinking—and I would say that Mr. Wagner and Mr. McDonough have been instrumental in working on this particular section. It is their feeling that the—this board or person or whatever the unit is who is going to appeal this would have the right to go through the records, naturally, to establish what had been done and what hadn't been done, so that they would have the authority any other person does, at any rate, to see all the records. And that they could do this. So we strongly feel that the taxpayer has the right to this independent tax review procedure. So again I reiterate, we have in no way changed our concept. We just feel that we were too legislative in our former Section 7, and now we recommend this shortened plan to this group. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there debate or discussion on the committee's proposed Section 7—amended Section 7? If not, members of the committee, you have before you for your consideration, upon the motion of Mr. Rygg, the Chairman of the committee, that when this committee does arise and report, after having had under consideration the amendment they propose to Section 7 of the majority report, that this body recommend that the same be adopted. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Section 7 is amended as adopted. Will the clerk please read Section 8.

CLERK SMITH: "Section 8. State indebtedness. No state debt shall be created unless authorized by three-fifths vote of the members of both houses of the Legislative Assembly. State debts cannot be created to over—to cover deficits incurred when appropriations exceed anticipated revenue during any budget period." Section 8, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 8 of Proposal Number 7, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: The present Constitution restricts the state to a hundred thousand dollar debt limit. Dollar limits do not reflect inflation, so the committee felt the limit should not be set in dollar amounts. We have seen that an unrealistic dollar limit only encourages circumvention. Some constitutional debt limits are set at a percent of assessed valuation. Reassessments of evaluation do not keep up with inflation either. Most modern assessed values are lower percentages than would necessarily be that of the market value. Such a debt limit could starve governments for borrowing if this percentage figure were locked into the Constitution. A statewide election requiring—requirement is an extraordinary limitation to place on any action of a sovereign state which is required to carry on government. Most states do hold that, notwithstanding debt limits, some obligations are not considered debt. Usually this type of limited obligation is in the form of revenue bonds which are payable exclusively from charges or rentals for the use of some facility or service, such as housing, food services, student union buildings, and so forth. Even on these limited obligations some have a debt limit, usually based on a percentage of the average revenue for the past three or four years, and then they say that the payments cannot—of the principal interest cannot exceed that. Again, such a percentage is a difficult figure to lock into a constitution. So it seems that if a debt limit cannot be clearly stated and—it will only lead to ambiguities. And we feel, as do many others in this area, the best way to be sure you aren't going to have ambiguities is to remove the debt limitation completely. Now, Minnesota abolished its debt limit in 1962, and Illinois did in 1970. The committee feels that with the extraordinary majority requirement of 60 percent, this should prevent any unnecessary programs, and it should also be viable enough so this section should be in use for many generations. Now, after the Romney hearing, Delegate Nutting was concerned with the wording that might allow the Legislature to create a debt to balance the budget, so that is why we added the last sentence. Now, I might say that a few of us met with a group of Senators and Representatives, who were mostly from the Senate Claims and Appropriations Committee, who have a very understanding need of the Legislature. We did present this to them, and I will say that some of them were concerned that we didn't have a debt limit, and they suggested that we did check with some more bond houses. We had already checked with at least one, and they thought our wording was ample. However, at the request of this group, we did some more research on it. We did call a bond-salesman in Minneapolis, and he referred us to a Mr. Whitney of Dorsey, Marquart, Windhorst, West and Halladay of Minneapolis—and they are a legal firm, as I understand it, who are very conversant with the bond problem in all the states. And I have a letter here signed by Mr. Whitney. It's rather long, so I'm not going to read it, but he read our proposed section and lists it here. Then his comment is: "This draft is entirely workable, it seems to us, if the decision is made to omit debt limits from the Constitution and to permit them to be established by the Legislative Assembly." So I suppose that what we are asking you, then, is whether or not you feel that this limit should be erased; and we have the assurance, at least of this firm, that that wording would be workable in the future. Now, these—this firm is fairly knowledgeable of Montana's bonding problems, because they did handle much of the work in the past. So thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, would the gentleman, Mr. Rygg, yield to a question, please?

DELEGATE RYGG: Yes, I'll try.

DELEGATE SCHILTZ: Mr. Rygg, assuming that we had a bicameral Legislature with 150 members in it, is it your version here that it would—90 members from both houses would be necessary whether they came—where they had three-fifths from one house or not?

DELEGATE RYGG: I would think our feeling was it would be three-fifths of either house—or, I suppose, then three-fifths of one house.

DELEGATE SCHILTZ: Will you give me time to work out an amendment? I don't think you said that.

DELEGATE RYGG: That's possible, Mr. Schiltz. I think that was the feeling of the committee. I think I am correct. The wording may be wrong on that. Mr. Drum, do you have an answer to that?

DELEGATE DRUM: Mr. Chairman. Perhaps I could assuage Mr. Schiltz's worries. The way we thought we worded it is, we wanted to make it tough and we wanted to make sure that 60 percent of the people that were elected by the people would be the ones that would act on this, rather than 60 percent of the people who happened to be there in any particular day. We want 60 percent of the people in each house to vote in the affirmative before the—

CHAIRMAN GRAYBILL: Is there further discussion?

Mr. Berg.

DELEGATE BERG: Would Mr. McDonough yield to a question?

DELEGATE McDONOUGH: Yes, Mr. Berg.

DELEGATE BERG: As I examine not only your Section 8, but the balance of the sections throughout the entire article, I don't find any limitation proposed for cities or municipalities, either on their borrowing capacity or the limits thereon. And I was wondering if that was an intentional omission, or is it otherwise covered?

DELEGATE McDONOUGH: Mr. Berg, we don't put any limits on it in this Constitution. In Section 10, when we talk about local government, we are talking about cities, counties, school districts, and so forth.

DELEGATE BERG: Will—would Mr. McDonough yield to another question?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE BERG: On Section 10, you provide for subdivisions and districts. But I, perhaps, should remind you that a municipality is neither a subdivision of the state nor a district of the state. And I'm wondering if, therefore, there is an omission.

DELEGATE McDONOUGH: It isn't so much an omission—I think we have some opinions from our research assistants that a city is a subdivision, but we'd be very glad to change it if you want to change it; but we don't want too much itemization so we get into rule of exclusion.

DELEGATE BERG: Thank you.

CHAIRMAN GRAYBILL: Mr. Berg—Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I move to amend Section 8, line 6, page 14, by striking the word "both" and substituting in lieu thereof "each" and striking the "s" on "houses".

CHAIRMAN GRAYBILL: Now, say that again. You want to strike the word "both"?

DELEGATE SCHILTZ: And substitute in lieu thereof, "each" and strike the "s" on "houses". We'll tidy it up after that. I just want to be sure that's their intent.

CHAIRMAN GRAYBILL: Mr. Schiltz—Mr. McDonough.

DELEGATE McDONOUGH: That would be all right. We'd approve that amendment.

CHAIRMAN GRAYBILL: All right. Members of the body, Mr. Schiltz has proposed to amend Section 8, on line 6, by striking the word "both", the third word in the line, and changing it for the—putting in in place of it, the word "each", so that it reads "by a three-fifths vote of the members of each house of the Legislative Assembly." So many as shall be in favor of that amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: It's adopted. Is there further debate?

Mr. Mahoney.

DELEGATE MAHONEY: Mr. President. I'd like to ask one of the committee—and I don't know who wishes to answer—what you mean down there in line 7: "State debt cannot be created to cover deficits incurred when appropriations exceed anticipated revenue during any budget period."

CHAIRMAN GRAYBILL: I guess you haven't got any takers, Mr. Mahoney.

DELEGATE MAHONEY: Well, I'll try to get my own interpretation, Mr. President.

CHAIRMAN GRAYBILL: Just a moment. Mr. McDonough, do you care to answer?

DELEGATE McDONOUGH: I think, Mr. President, it's self-explanatory.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: Well, Mr. President, may I speak?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE MAHONEY: Here she goes. We're going federal. We're going fast. This is it. I don't know what you're going to do if the Legislature is in debt. All—with all your laws and that, somebody's going to pay it. You're not going to go out. We had a precedent, even with the other one. We had a precedent that set out here, back in '33 when they passed a bill to work—to go out here and get the warranted indebtedness taken out of some 5 million. I'm the only man, probably, in this room that had to wait to get state warrants cashed. They would only cash enough for me to let me eat on. This is an actual fact. And I just—I'm so careful. And I don't want this greatest state in the Union, that has so small a debt—I love—when I go out and see the federal government going in debt the way it's going in debt. Thank goodness, we stand out here alone as one state in the Union with no indebtedness. We have a few—low warranted indebtedness, and I just see, thank goodness, the Legislature in its wisdom—we're going to have a surplus in the General Fund. I think that's marvelous. This criticized Legislature around here did do something good; it kept our funds in the black. And this is what we're doing here. We're now going to exceed all the limit, and by a three-fifths vote of this Legislature—not the old necessary two-thirds that we used to have on exceptional cases—three-fifths—can go in debt. Waves of hysteria are coming and going. We had to go out by the voters before. Now, we're going to do this by three-fifths; and if it's a unicameral Legislature of a hundred, that's 60 can decide to put the State of Montana in debt terrifically. I question whether we want to do it, and I don't see what you're going to do in Section 7. You say it's self-explanatory. But as I read it, state debt cannot be created to cover deficits incurred by appropriations except anticipated revenue during any budget period. Are you going to go to the next session—of the Legislature and pay this off first before you can continue government? This is what I want to know. But, no, you are going to pass a debt with 60 percent of the body, unicameral, or 60 percent of two bodies if it's bicameral. And we go out here—we're going so loose on this financing. I think—I don't understand the committee for going out this far. If they'd have said three-fourths, I wouldn't have had quite the objection, but two-thirds—to go from the vote of all the people of this state, a majority vote, to go down to 60 members, unicameral. I think we're getting a long ways down the road.

CHAIRMAN GRAYBILL: Mr. Swanberg.

DELEGATE SWANBERG: I heartily concur in the comments of Mr. Mahoney a few moments ago. We all know how hard it has been in times past to get bond issues through for various purposes. But I submit that that was one of the advantages of the old system. Public officials thought long and hard and planned extremely carefully before they put something up to a vote of the people on a bond issue. Under the present system, as Mr. Mahoney has pointed out, it will take just 60 people on a unicameral body to approve a debt, that would be presumably a bond issue. And I submit for your consideration the very real possibility that this planning that we have had to use in the past will go down the drain. And there will be all kinds of projects proposed here to put the people of Montana in debt for projects that the public as a whole probably does not want.

CHAIRMAN GRAYBILL: Is there further discussion?

Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman. I rise in support of Mr. Mahoney's objections to this provision. We, right now, have in the planning stage this highway complex building. There is a building for the Supreme Court being planned. If this—the proposal of the committee goes through, we'll be back into the shape we were in when I started practicing law in 1933. I can recollect that the warrants of the cities and the counties and—as Mr. Mahoney stated—of the State of Montana were not cash items. You had to stand in line. You had to wait, or you had to discount them if you wanted to get some cash out of them. And I think this is extremely dangerous. It's—we're here to write a constitution, true enough. We have some responsibilities also as delegates to this Convention, and part of those responsibilities are to protect the people of the State of Montana from a debt that will be like the old man of the sea on their backs. And I think we ought to take a careful look. The old Constitution had it in a provision that the Legislature had to balance the budget, and I fail to find that provision anyplace in this proposal.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Will Mr. Aronow yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Aronow?

DELEGATE ARONOW: Well, I'll try.

DELEGATE REICHERT: Section 9 states, "Appropriations by the Legislative Assembly shall not exceed anticipated revenues during any budget period". Doesn't that imply balancing the budget?

DELEGATE ARONOW: Yes, it does, but also you have to read this Constitution together. The courts have said that you pick it up by its four corners, like any law. And here in one place you have extremely lax, and the other place you have something else; and what was the intent?

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman. I just wish to state that I speak in support of the majority proposal. I believe the Legislature will attempt to balance the budget.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President. Ever since I read the proposal of Revenue and Finance and Section 8, it really shook me. I view, with great alarm, the possibilities that could be incurred here by putting the state in such a financial jackpot as the federal government is in now. Montana has kept its skirts clean. We don't have any indebtedness now, and I submit that the old provision, that when you had to go back to the people and get their vote to incur an indebtedness, is a good, sound safeguard, and I think we should preserve it.

CHAIRMAN GRAYBILL: Very well. The issue is on Section 8 as amended.

DELEGATE MAHONEY: May I make a short amendment—very short?

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: I move to amend—in Section 8, in line 5, strike out the word "three-fifths" and make it "three-fourths".

CHAIRMAN GRAYBILL: Mr. Mahoney has suggested that we replace the language "three-fifths" by the language "three-fourths", in line 5 of Section 8 as proposed by the committee.

Mr. Mahoney.

DELEGATE MAHONEY: All I'm trying to do is to get this a little above the Governor's veto. Under your present system, a Governor's veto couldn't have even stopped it, because two-thirds—or three-fifths of the members could have passed it and the Governor wouldn't have anything to say under a veto that they could decide—and—I'm just getting a little—trying to get a little bit above a Governor's veto.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Mahoney's amendment that we change "three-fifths" to "three-fourths" in line 5 of Section 8, so it reads: "No state debt shall be created unless authorized by a three-fourths vote of the members of each house of the Legislative Assembly." So many as shall be in favor say—do you want a roll call vote? Do you want to speak?

DELEGATE FURLONG: I'd like to speak, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well.

DELEGATE FURLONG: I was hoping some other member of the committee would get up, but what I think we're doing by locking it in at three-fourths is effectively destroying the intent. I've heard a lot of talk about the state not being in debt—and, of course, the state is in debt. It's in all kinds of debt. We have revenue bonds and other kinds of bonds by which we build buildings, and which get declared unconstitutional. We all know that we can exceed the anticipated income and plan a budget on it, and when the income doesn't come in, we end up in debt. I think the three-fourths vote effectively destroys the concept that the committee attempted to establish when they authorized the state to go, if you'll pardon the expression, honestly into debt by a will of the Legislature. I think three-fourths destroys that. I might be willing to go along with two-thirds, but if you put the three-fourths in here, you're effectively killing the concept of the section and I stand in opposition to it.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Will Mr. McDonough yield?

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Mr. Brown.

DELEGATE BROWN: Assuming wherever [whatever] we end up with, three-fifths or three-fourths, we'd—is there any way that a simple majority could refer a debt question to the people under this section?

DELEGATE McDONOUGH: Not under this section. That's why three-fourths is just too high. That's three-fourths of all members, not those present and voting; that's all members, when he changes it this way.

CHAIRMAN GRAYBILL: Mr. Joyce was up first.

DELEGATE JOYCE: I hate to keep getting up and talk—It seems to me that when we passed the Legislative Article, we provided that the Legislature could submit any question to the people by referendum, and so, surely, if there's a problem about creating a debt, they can submit it to the people just like they can refer any other measure to the people. So it seems to me that—I'm in favor of the majority of the committee report, and I think the Legislature—if they can and wish to submit a debt to the people, they can. And it seems to me we don't really have to protect the people from Montana from themselves. If they do submit—if they do go heavily in debt, why, I would think that the people will remove that Legislature the next session. I would think that the committee proposal gives flexibility to the Legislature to actually meet the problems and to, as Mr. Furlong said, go in debt honestly. And I take it—I'm willing to trust the future Legislature, that they will do it judiciously.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Will Mr. McDonough yield to a question?

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE AASHEIM: Do you refer here to debentures that might be floored by the Legislature to provide for buildings or something of that nature?

DELEGATE McDONOUGH: I think we refer to about everything that might be considered under past decisions as a state debt. And I think that goes to any type of debt that is created which you're pledging any type of taxing revenues to pay. Now, it's very possible that—and I don't think they do—are covered—the debt that's created on revenue bonds, such as the room rents and for food facilities, and so forth, of the University System. But I do think that any time you're pledging any taxes to pay off those bonds, you're creating a state debt.

DELEGATE AASHEIM: Will he yield to one more question?

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE AASHEIM: Do we have any limitation, like three-fifths or three-fourths on now, or can a majority of the Legislature pass a bill which would put us into bond indebtedness?

DELEGATE McDONOUGH: Well, up until the last Supreme Court opinion, the court thought that any state debt in which you pledged the full faith and credit through a property tax to pay off had to be referred to the people, but others did not. However, last fall the Supreme Court changed their minds and said that any debt created in which you pledged any taxing revenue, such as the income tax, then it has to be referred to the people, and subject also to the hundred thousand dollar debt limit. That's essentially what the present law says.

DELEGATE AASHEIM: Will he yield to one more question?

DELEGATE McDONOUGH: Yes.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE AASHEIM: When the Legislature floated bonds for the support of the veterans of—well—the Second World War and they proposed to use the cigarette tax to pay for that indebtedness, didn't a majority of the Legislature approve that?

DELEGATE McDONOUGH: I think they did—or it wouldn't—Tom Joyce says it was by initiative. And what happened in that Supreme Court decision last fall, they said it would not affect the constitutionality of any previously bond issues issued, and so forth.

DELEGATE AASHEIM: Thank you.

CHAIRMAN GRAYBILL: Mr. Swanberg was up.

DELEGATE SWANBERG: Mr. President. There's certainly many instances where small bond issues are desirable for small projects, without the necessity of referring them to a vote of the people. If the Legislature, in its wisdom, felt the need for a small addition to this building, for instance, it might cost, let's say, half a million dollars. The public at large would not be conversant with what the needs of the building were, and it would be a very clumsy proposition to have to submit that to the people. This is one of the problems, I think, that the committee is trying to avoid. It seems to me, however, that there are other projects that the public should vote upon. And I'm wondering if perhaps some addition in here, by way of a limitation, might not be in order. For instance, we could say, in Section 6, as an addendum to it—or Section 8, I beg your pardon, that all indebtedness in excess of a million dollars—to take a figure out of the air—shall be approved by the electors of the State of Montana. That would satisfy, I think, what I think the committee is really getting at here and would also protect the public.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman, could I direct a question to Mr. McDonough?

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Yes, ma'am.

DELEGATE ECK: The wording in this really concerns me, because it says, "No state debt shall be created unless authorized by a three-fifths vote of the members." Now, don't you think that this could be interpreted to rule out a referendum?

DELEGATE McDONOUGH: I don't know. I haven't studied the General Government section that close as to whether or not that could be.

DELEGATE ECK: Well, this concerns me. I—

DELEGATE McDONOUGH: Wait a minute. Now, there's no reason why the—if the Legislature passed it by a three-fifths vote, there's no reason why—if the General Government section is broad enough—why the people couldn't demand a referendum on it if they didn't like it.

DELEGATE ECK: Now, I can accept that, but I was thinking that suppose we adopt the three-fourths—and I like the idea of three-fourths, because I think that the people are concerned about debt limits. Maybe their fears are really groundless, but I do know that this is one area where there is a lot of concern. And if we adopted a three-fourths, it could be very, very difficult, as you say—it could be even with the two-thirds—to get this kind of approval. And yet there might be issues that you would really want to refer to the people. There might be issues where there is not that much general agreement among the Legislature. And I think the article ought to be flexible enough so that this option is open to the Legislature. And I would like to see some wording change here, but I don't feel that I'm able to make it. Thank you.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Mr. President, may I speak on that? Actually, if the Legislature, on this section, did pass it by a three-fifths vote, there's no real reason why they couldn't condition the enacting legislation on a referendum of the people before it became effective.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Well, Mr. Chairman, my—I join with Mrs. Eck. I do have some concern that we're excluding referendum or initiative. And if there's any doubt, I would now like to make an amendment to the substitute motion on—I'm talking on line—or page 14, line 6, after "Legislative Assembly".

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Yes, sir.

CHAIRMAN GRAYBILL: I see your point and I'm certainly in favor of letting you have that right, but we have Mr. Mahoney's amendment to change "three-fifths" to "three-fourths". And I don't see how you can amend that. Do you want to substitute for it, is that it?

DELEGATE BROWN: Well, let's vote on Mr. Mahoney's and then I'll offer an amendment after that.

CHAIRMAN GRAYBILL: Right. Otherwise, you'll kill his issue if you offer a substitute amendment.

DELEGATE BROWN: I will now withdraw my amendment.

CHAIRMAN GRAYBILL: All right. I'll

come back to you. We're still on Mr. Mahoney's amendment to change "three-fifths" to "three-fourths" of the total membership of each house of the Legislative Assembly".

Mr. Martin.

DELEGATE MARTIN: I wonder if I could ask—if Mr. McDonough will yield to a question, please.

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE MARTIN: We have a present limitation of $100,000 in the Constitution.

DELEGATE McDONOUGH: That's right.

DELEGATE MARTIN: But in looking over the State Auditor's monthly report, you find that our state indebtedness is about $83 million, is that right? How do we get there?

DELEGATE McDONOUGH: I don't know whether—I don't know enough about the figures, but actually the $83 million, if I remember correctly, is the revenue bonds issued by the University System and maybe other types of government. So actually, that's why sometimes I think when you think of this state indebtedness and the limits of the revenue bonds, how they can go right around a state debt limit on revenue bonds. It's always important, but now—the state is now 83 million dollars in debt, if Mr. Martin figures correct, of which the [they] only pledged revenues therefor. But you know and I know, if those bonds started to default there would be a lot of pressure on the Legislature to make those payments on those revenue bonds and they would probably make them in order to keep the state's credit, even though that—the buyers of these revenue bonds knew at the time that they could only go to—look to the revenue to pay it. So there is indebtedness created, and there's indebtedness created all the time, that's outside of this limitation.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I think maybe I can throw a little light on the subject of what Mr. Aasheim is talking about. Now this is an opinion from this same firm who has dealt with Montana and their bonds. They say, "Notwithstanding constitutional debt limits, in almost all states, including Montana, the courts hold that some obligations are not—in parenthesis—debt. Typically, as in Montana, these are either revenue bonds payable exclusively from charges or rentals for the use of some tangible facility or service, or special assessment bonds payable exclusively from special assessments which are levied by reason of the special benefit resulting to individual properties for some public improvement." And I'm sure that Mr. Aasheim is correct; I'm sure that when the money was appropriated for the building funds—the long-range building funds, it only required a majority in the—of each house to do that. I believe that's correct. So I think the argument probably is what is really debt and what isn't. From the revenue bonds, they more or less call out a limited obligation rather than a state debt. And I didn't speak against this three-fourths because I didn't think it had a chance of passing. But I figure three-fourths is too high, and I would resist the three-fourths.

CHAIRMAN GRAYBILL: Mr. Mahoney, do you want to close?

DELEGATE MAHONEY: Please. There's an awful lot of difference between a revenue bond for—to pay for a university or something like that—a building for housing or to go out here—and something in revenue. But when you start taking the state General Fund and tying it up with a debt—and that is what you could do with this 60, if it's unicameral—tie up the state forever—putting it on. Now, this will really be good; this is—I'm telling you, this is the best I've heard. Then we turn around and go back to that other section over here that I tried to strike yesterday, where we're going to dock—start exempting classes of property. This could get really rough on the final end. The thing of it comes that I think Fred is correct when he said 83 million, but these are revenue bonds. They were not put out by the people. They weren't—The last thing we voted on, I believe, is that cigarette tax, which we pledged by—for a—I think it's pledged entirely for, at that time and the first thing is soldiers' bonus. Now, I think that if we go out here and make it this easy, it's going to be very easy instead of placing revenue bonds—so as to force these things to be collected, we will be in here getting everything on state general obligation bonds. The pressure is going to be very easy to come down here, under this unicameral system of the Legislature, and work out and get only 60 of them. Now, I'm just trying to do—is let you go up to get 75 of them. Then if the Governor—he won't have to worry. If he vetoes it, they can still pass it over his head. And I'd certainly hope that the three-fourths will pass.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Mahoney's amendment, on line 5 of Section 8 as proposed by the committee, to change the numbers "three-fifths" to "three-fourths". Do you want a roll call?

DELEGATES: Yes.

CHAIRMAN GRAYBILL: Okay. So many as shall be in favor of Mr. Mahoney's amendment, vote Aye; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well. Take the vote.

Aasheim	Nay
Anderson, J.	Aye
Anderson, O.	Nay
Arbanas	Absent
Arness	Nay
Aronow	Aye
Artz	Nay
Ask	Nay
Babcock	Aye
Barnard	Aye
Bates	Absent
Belcher	Absent
Berg	Nay
Berthelson	Nay
Blaylock	Absent
Blend	Aye
Bowman	Nay
Brazier	Aye
Brown	Aye
Bugbee	Aye
Burkhardt	Nay
Cain	Absent
Campbell	Nay
Cate	Aye
Champoux	Nay
Choate	Aye
Conover	Aye
Cross	Aye
Dahood	Nay
Davis	Aye
Delaney	Aye
Driscoll	Nay
Drum	Nay
Eck	Aye
Erdmann	Aye
Eskildsen	Absent
Etchart	Absent
Felt	Absent
Foster	Nay
Furlong	Nay
Garlington	Nay
Graybill	Nay
Gysler	Aye
Habedank	Nay
Hanson, R.S.	Aye
Hanson, R.	Nay
Harbaugh	Aye
Harlow	Nay
Harper	Aye
Harrington	Absent
Heliker	Nay
Holland	Absent
Jacobsen	Nay
James	Nay
Johnson	Aye
Joyce	Nay
Kamhoot	Aye
Kelleher	Nay
Leuthold	Aye
Loendorf	Absent
Lorello	Aye
Mahoney	Aye
Mansfield	Aye
Martin	Aye
McCarvel	Nay
McDonough	Nay
McKeon	Nay
McNeil	Aye
Melvin	Aye
Monroe	Absent
Murray	Aye
Noble	Aye
Nutting	Aye
Payne	Nay
Pemberton	Aye
Rebal	Absent
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	Aye
Rygg	Nay
Scanlin	Nay
Schiltz	Aye

Siderius	Nay
Simon	Aye
Skari	Aye
Sparks	Nay
Speer	Nay
Studer	Aye
Sullivan	Nay
Swanberg	Aye
Toole	Nay
Van Buskirk	Absent
Vermillion	Absent
Wagner	Nay
Ward	Aye
Warden	Nay
Wilson	Aye
Woodmansey	Aye

CLERK HANSON: Mr. Chairman, 42 voting Aye, 43 voting No.

CHAIRMAN GRAYBILL: 43 having voted No and 42 voting Aye, the motion fails and it remains three-fifths. Mr. Habedank, you sent up an amendment. Would you like the Chair to read it? Mr. Clerk, will you read Mr. Habedank's amendment.

CLERK HANSON: "Mr. Chairman. I move to amend Section 8 to read as follows: 'Unless the law authorizing the same shall have been submitted to the public at a general election and shall have received a majority of the votes cast for and against it at such election, no state debt shall be created unless authorized by a two-thirds vote of the members of each house of the Legislative Assembly. State debt cannot be created to cover deficits incurred when appropriations exceed anticipated revenues during any budget period.' Signed: Habedank."

CHAIRMAN GRAYBILL: Mr. Clerk, may I have that? The purpose—or substance of Mr. Habedank's amendment, then, is to change the committee's proposed Section 8 by retaining the last sentence but by putting in the first sentence that the matter must be submitted to the electorate unless it has received a majority of two-thirds of the members of each house. Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. The first sentence of that—or the first phrase of that is taken from the last four lines of Section 2 of the present Article XIII and is intended by me to cover the situation where it is possible three-fourths of the Legislative Assembly cannot agree and they will still have the opportunity, by a majority vote, to refer the matter to the people. And if a majority of the people vote for the indebtedness, it can then be created without a three-fourths vote of the Legislature. The next change is just merely changing the word "three-fifths" to "three-fourths", as contained in the balance of the proposal of the—

CHAIRMAN GRAYBILL: Mr. Habedank, you meant "two-thirds". I don't want to get the wrong idea. Go ahead.

DELEGATE HABEDANK: I meant two-thirds—yes, pardon me—two-thirds; I wish to reduce that from three-fourths to two-thirds. But it allows the Legislature leeway, as intended by the committee, and it still gives an opportunity for the creation of debt by a majority vote of the people.

CHAIRMAN GRAYBILL: I'll read that first sentence again for you. "Unless the law authorizing the same shall have been submitted to the people at a general election and shall have received a majority of all the votes cast for or against it at such election"—then it goes back into the regular thing—"no state debt shall be created unless authorized by a two-thirds—" So it has the effect of saying that you have to have two-thirds in the Legislature, or you have to submit it to the electorate. I think that correctly states it.

Mr. Rygg.

DELEGATE RYGG: Mr. Chairman. I sense the feeling of the committee, and I think it's a good arrangement. And I think the committee, if we polled them, would accede to this and agree to this amendment.

CHAIRMAN GRAYBILL: Is there further discussion?

Mr. Berg.

DELEGATE BERG: Mr. Chairman. I rise in opposition to the proposed amendment, and I am concerned basically with the nature and character of the wording as it's proposed. I think that when you say, "no state debt shall be created"—if you use that language, you then are limiting the creation of debt of any kind, whether by revenue or general obligation, to action by the Legislature. And you may very well be foreclosing the right to do it by initiative or perhaps even to deny it by referendum. I would suggest that when you—in considering this, that you consider that you are talking principally about general obligation bonds and that the sentence should read in such a manner that it is in an affirmative method—an affirmative statement rather than a negative statement. Now, I don't propose this as an amendment at the moment, but I would like you to consider, when you're discussing—when you're voting on this particular amendment, language that might be—read such as this: "General obligation debt of the state may be incurred upon a two-third vote of the members of each house of the Legislative Assembly." This is an affirmative statement rather than a negative approach. It relates entirely to general obligation, does not restrict revenue bonds, and does not foreclose the possibility of debt creation by initiative or the refusal of it by referendum.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I have a little confusion about this, and I guess you could clear it up, because we don't have it before us. Do I understand from this amendment that there would—that a two-thirds vote of each house would authorize the debt, much as the committee report provides, but that if they couldn't get two-thirds, a 51 percent vote would be sufficient to get a referendum?

CHAIRMAN GRAYBILL: I think that's the sense of Mr. Habedank's amendment. He changes the "three-fifths" to "two-thirds", but he adds that if they can't get a two-thirds, then any law could be passed by a majority submitting it to the electorate for a vote. Isn't that right, Mr. Habedank?

DELEGATE HABEDANK: Mr. President. That is my intent, and as far as I'm concerned, I don't feel it's necessary for this body to try to straighten out that language; that Style and Drafting can straighten it out. It's my intention that a debt can be created by a majority vote of the people and referred to them by majority of the Legislature or, in lieu thereof, by a two-thirds vote.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Does the amendment provide, as the majority report does after I amended it, that it requires a two-thirds vote of each house?

CHAIRMAN GRAYBILL: Yes. I want to point out for everybody so we understand, it does say, "unless the law authorizing the same shall have been submitted to the people." So I don't think we've covered the initiative problem.

Mr. Aasheim.

DELEGATE AASHEIM: Would Mr. Habedank yield to a question?

CHAIRMAN GRAYBILL: Mr. Habedank?

DELEGATE HABEDANK: Yes.

DELEGATE AASHEIM: Would this put a restriction on the building of a highway structure?

DELEGATE HABEDANK: I don't see that it would, any more than the present wording of the Revenue and Finance Committee. We've given them the power to do everything that they can do by a three-fourths—by a two-thirds vote. But I would also have no objection to initiative measures. I want to preserve the situation. It was my intent that we allow the people, by a majority vote, to create this and be referred to them.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman. I'd just like to point out, while this discussion is going on, that when the General Government Report Number 12 comes before us, its sections on initiative and referendum allow initiative and referendum on all matters except appropriation of money. And this was the substance of what the Legislative Committee thought through and passed on to them with our recommendation, too. So I just want you to be aware that if we do something here, we're looking down the road a little bit to maybe overturning their proposal on initiative and referendum.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman. I think I need a couple of things cleared up here. One is—maybe Mr. Brown from General Government can answer this one for me. My question is, is debt in the same classification—incurring a debt—as an appropriation, or wouldn't those be different?

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Well, it would be my opinion that they would be different. But I'm going to offer a substitute motion to clear this up, I hope—unless I cloud it up more.

DELEGATE ECK: Why don't you offer your substitute motion now? I think maybe that's what I'm waiting for.

CHAIRMAN GRAYBILL: Well, I've got two or three others up here, but I'll give you the floor, Mr. Berg—(Laughter)—Mr. Brown. I can't figure them out either. Go ahead.

DELEGATE BROWN: Mr. President. I move, as a substitute motion, to change "three-fifths" to "two-thirds". Then at page 14, at line 6, after "Legislative Assembly", add the following: "or unless authorized by a majority of the electors at a general election." So all you need is an election, however they get to it.

CHAIRMAN GRAYBILL: At a general election?

DELEGATE BROWN: Well, I used the words—the old Constitution. Let's strike "general" and just say "at an election."

CHAIRMAN GRAYBILL: "—at an election."

DELEGATE BROWN: Or I don't know if we even need "at an election"—just "or unless authorized by a majority of the electors period."

CHAIRMAN GRAYBILL: You really don't want "at an election" in there?

DELEGATE BROWN: I don't want "election" in there. I'll leave that up to Mr. Schiltz. I don't think you need "an election" in there. That's the only way it could be authorized.

CHAIRMAN GRAYBILL: Now, that's on line—

DELEGATE BROWN: On line 6, after "legislative assembly". I'm adding the following: "or unless authorized by a majority of the electors."

CHAIRMAN GRAYBILL: All right. The substance of Mr. Brown's substitute motion is to change "three-fifths" to "two-thirds" and to add the words—it—so it'll read: "authorized by a two-thirds vote of the members of each house of the Legislative Assembly or unless authorized by a majority of the electors", which he thinks has the effect of saying that if the Legislature submits it on a 50-50—51 percent vote, fine, or if it comes by initiative, fine. All right, that's the substance of Mr. Brown's substitute motion. Is there discussion?

Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. I think either Mr. Brown's motion or mine would reach the point where the Style and Drafting Committee could accept it. And as long as Mr. Brown agrees to the two-thirds, I support his substitute motion.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: I rise to support increasing it to two-thirds and the vote of the people. I think we've got to remember what we did yesterday in relation to this and some other things in this matter. The majority report takes off the 2-mill levy on all the real and personal property taxes in the State of Montana. The majority report then removes the local assessment, equalization and appraisal of this property and vests that in the State of Montana. So when they're worried about the Highway Department's bureaucracy, I'm afraid we've created one that will put it to shame, if this works for about 10 years. And now, they've taken off any debt ceiling as to how much the Legislature then can levy. Now, remember, this is the same Legislature that last week, they didn't even want to give them the authority to fix how many days' notice they had to give to hold a hearing. This is that same Legislature that we're—we talked about hearings here last week. And so, I would support anything that would increase some of the protections that the general public is going to have in this method of finance. Because when you talk about the antidiversion thing scaring the people, that's not going to scare them near as much as when you take all the taxing power away and place it in the state; all the appraisal power. Take it out of the hands of our local Assessor and County Commissioner. When you take off your 2-mill debt levy—I don't know whether it's been mentioned, but the annual mill levy for the University System, or any of the rest of them, won't ever—won't have to go through that struggle anymore, thank goodness. And we won't have any mill levy to be concerned about how much tax can be placed on, but they will be able to appraise the property high enough and levy enough taxes so that won't really work any hardships. So I support making some tighter restrictions in here.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I think we're a little bit confused as to the present power of the Legislature to go into debt. I would move that we pass consideration of Section 8 until we reconvene after lunch, and then maybe, in the process, we can find out what we are presently doing in this area. I don't think we know exactly what we're talking about right now.

CHAIRMAN GRAYBILL: Mr. Aasheim has made a motion to pass Section 8 until 1 o'clock p.m. Is there discussion?

Mr. Kelleher. Do you want to discuss that?

DELEGATE KELLEHER: No.

CHAIRMAN GRAYBILL: Very well. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it, and it fails.

Mr. Berg.

DELEGATE BERG: Mr. Chairman. I move, as a substitute motion, that the first sentence of Section 8 read: "General obligation debt of the state may be incurred by a two-third vote of the members of each house of the Legislative Assembly, or"—correction—"or unless authorized by a majority of the electorate."

CHAIRMAN GRAYBILL: All right. For the benefit of the body, the Chair is going to call that an amendment to Mr. Brown's substitute motion, since they—we can't have another substitute motion. But it does have the effect only of changing the—Mr. Brown's amendment from a negative to a positive statement. And it does have the additional amending effect, Mr. Brown, of stating general obligation debt rather than no state debt. And therefore it eliminates, according to Mr. Brown—according to Mr. Berg, the problem of revenue bonds being limited by this language. So I'm going to allow the amendment. And, Mr. Berg, you may discuss it; then I'll come to you.

DELEGATE BERG: The Chair has already put it exactly as I intended, so I'll not make any further statement.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. President. I rise in opposition to the amendment. The reason I do so—I'm like Mr. Aasheim, I don't want to get into a debate on debt. But the reason I oppose it is the present Constitution, Article XIII, Section 2; when they talk about debt, they say, "will create any debt". They don't refer to general obligation, revenue or not; and that section, as I presume, has been litigated—or Mr. McDonough is familiar with it, and I'd hate to change the wording of the present Constitution. But I'd defer to Mr. McDonough.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: (Inaudible) —what Mr. Brown has said fully. When you get into general obligation bonds, you might only be limiting this section to general obligation bonds which are pledged. The payment thereon is property taxes only. And it might open you up wide as to pledging income tax, and maybe not the other full faith and credit of the state. We put—in the original draft, we put in state debt especially, because it has been interpreted by the Supreme Court a number of times in Section 2 of the present Article XIII, and we mean it the same way it is meant in there; and we don't want to get into some other thing like general obligation bonds.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: (Inaudible) Will you yield to a question?

CHAIRMAN GRAYBILL: Mr. McDonough, will you yield?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE BERG: Well, isn't it true that of the approximately $86 million debt that we have in the state now, that has been created almost exclusively by revenue bonds? And therefore does not the constitutional limitation apply principally, if not only, to general obligation bonds?

DELEGATE McDONOUGH: Well, I hate to change the wording of our present thing to general obligation over than state debt. Now, state debt has been interpreted as to what it means. I think it means the—pledging the full faith and credit of the state. If you get into GO bonds, then you get into the position that—now, what is a GO bond? Is a GO pledging that full faith and credit only from property taxes, or partially from property and income taxes, or some other excise taxes that can be segregated and pledged to the payment of this? It's actually taxes and not revenue from a source to make it revenue bonds. That's why I don't want to get into GO's.

DELEGATE BERG: Mr. Chairman. I yield to Mr. McDonough's position and withdraw the amendment.

CHAIRMAN GRAYBILL: All right. Mr. Berg's is withdrawn, and we're back on Mr. Brown's motion to change "three-fifths" to "two-thirds" and add the words "or unless authorized by a majority of the electorate". In other words, to say that the Legislature can pass—can create debt by a two-thirds or by referring it to the electorate. But it also covers the initiative problem, because it doesn't forestall it. Is there further discussion of Mr. Brown's proposed amendment—substitute motion.

UNIDENTIFIED DELEGATE: Roll call.

CHAIRMAN GRAYBILL: A roll call has been called for.
Do you want to close, Mr. Brown?

DELEGATE BROWN: I close.

CHAIRMAN GRAYBILL: Oh, wait a minute. Mr. Kelleher, you had some questions?

DELEGATE KELLEHER: I'd like to ask a question, if I may, of Mr. McDonough.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Yes, sir.

DELEGATE KELLEHER: State debt—could you give me some examples of state debt in the first sentence that would not be included in the last sentence? Are we talking just about general obligation bonds, or revenue bonds, or both? What's included in state debt in the first sentence, and is it any different than state debt in the second sentence?

DELEGATE McDONOUGH: No.

DELEGATE KELLEHER: It's the same thing. Well, then how could we go into debt that isn't excluded by the second sentence?

DELEGATE McDONOUGH: What we're talking about in the first sentence is debt issued on bond issues, and so forth, for capital expenditures. What we're talking on the second sentence is any state debt issued and created for the purpose of beating those appropriations.

DELEGATE KELLEHER: For prior appropriations, is that right?

DELEGATE McDONOUGH: Prior, or present at the time they're fixing up their budget.

DELEGATE KELLEHER: But on the first sentence, you would authorize either general obligations or revenue obligations, either one? Would they be tied into revenue?

DELEGATE McDONOUGH: Revenue is not included in the first sentence.

DELEGATE KELLEHER: It is not?

DELEGATE McDONOUGH: No.

DELEGATE KELLEHER: Thank you.

CHAIRMAN GRAYBILL: You understand why, Mr. Kelleher? The term "state debt" has been defined by the courts only to be that debt which pledges the credit of the state, and the revenue debt bond doesn't. Mr. Brown, do you want to close?
Mr. Rygg.

DELEGATE RYGG: I would just like to say, we were for Habedank's and he withdrew his and Brown's is about the same, so we would support that.

CHAIRMAN GRAYBILL: All right.
Mr. Brown.

DELEGATE BROWN: I close except to clarify that we do have members of each house in there now, don't we?

CHAIRMAN GRAYBILL: Yes.

DELEGATE BROWN: I close.

CHAIRMAN GRAYBILL: Very well. The—a roll call vote has been called for. So many as are in favor of Mr. Brown's motion to change "three-fifths" to "two-thirds" and to add the words "or unless authorized by a majority of the electors", please vote Aye; those that are opposed, vote No. Has every delegate voted?
(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?
(No response)

CHAIRMAN GRAYBILL: Please take the vote.

Aasheim	Absent
Anderson, J.	Aye
Anderson, O.	Aye
Arbanas	Absent
Arness	Nay

Aronow	Aye
Artz	Aye
Ask	Aye
Babcock	Aye
Barnard	Absent
Bates	Aye
Belcher	Absent
Berg	Aye
Berthelson	Nay
Blaylock	Aye
Blend	Aye
Bowman	Aye
Brazier	Aye
Brown	Aye
Bugbee	Aye
Burkhardt	Aye
Cain	Absent
Campbell	Aye
Cate	Aye
Champoux	Aye
Choate	Aye
Conover	Aye
Cross	Aye
Dahood	Aye
Davis	Aye
Delaney	Aye
Driscoll	Nay
Drum	Aye
Eck	Aye
Erdmann	Aye
Eskildsen	Absent
Etchart	Aye
Felt	Absent
Foster	Aye
Furlong	Aye
Garlington	Aye
Graybill	Absent
Gysler	Aye
Habedank	Aye
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Aye
Harlow	Aye
Harper	Aye
Harrington	Aye
Heliker	Aye
Holland	Absent
Jacobsen	Aye
James	Aye
Johnson	Aye
Joyce	Aye
Kamhoot	Aye
Kelleher	Aye
Leuthold	Aye
Loendorf	Aye
Lorello	Absent
Mahoney	Aye
Mansfield	Aye
Martin	Aye
McCarvel	Aye
McDonough	Aye
McKeon	Aye
McNeil	Aye
Melvin	Aye
Monroe	Aye
Murray	Aye
Noble	Aye
Nutting	Aye
Payne	Aye
Pemberton	Absent
Rebal	Aye
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Aye
Romney	Aye
Rygg	Aye
Scanlin	Aye
Schiltz	Aye
Siderius	Aye
Simon	Aye
Skari	Aye
Sparks	Aye
Speer	Aye
Studer	Aye
Sullivan	Aye
Swanberg	Aye
Toole	Absent
Van Buskirk	Aye
Vermillion	Aye
Wagner	Aye
Ward	Aye
Warden	Absent
Wilson	Aye
Woodmansey	Aye

CLERK HANSON: Mr. Chairman, 86 delegates voting Aye, 2 [3] voting No.

CHAIRMAN GRAYBILL: 86 delegates having voted Aye, 2 [3] voting No, Mr. Brown's amendment is adopted and the section now reads: "No state debt shall be created unless authorized by a two-thirds vote of the members of each house of the Legislative Assembly, as—or unless authorized by a majority of the electors. State debt cannot be created to cover deficits incurred when appropriations exceed anticipated revenue during any budget period."

Mr. Rygg.

DELEGATE RYGG: I move that when this committee does arise and report, after having had under consideration Section 8 of Proposal 7, that it be adopted as amended. Thank you.

CHAIRMAN GRAYBILL: You've heard the motion of Mr. Rygg, the Chairman of the committee. All in favor of the motion—

Mr. Swanberg, for what purpose do you rise? Oh, do—you want to make another amendment, right?

DELEGATE SWANBERG: If I could, Mr. President, yes.

CHAIRMAN GRAYBILL: Excuse me, I had it here. Mr. Swanberg.

DELEGATE SWANBERG: I would like to now move to amend Section 8 by adding a portion of Section 2 of our present Article XIII in our present Constitution. The amendment just made by Mr. Brown goes a long ways towards clarifying the problems we have here, but I don't think it goes all the way. Under the situation that we now have under Section 8, a debt can be created by a two-thirds vote of the Legislature or it can be referred to the people and they can vote on it. But the fact still remains that a two-thirds vote of the Legislature can create a debt of any amount. And I think this right to create debt in excess of a certain amount should remain with the people. And so I have submitted an amendment which would read as follows—this is out of the present Constitution, in effect—But—"No debt or liability shall be created which shall, singly or in the aggregate with any existing debt or liability, exceed the sum of $1 million"—it used to be a hundred thousand dollars—except in the case, now that the—"unless the law authorizing the same shall have been submitted to the people at a general election and shall have received a majority of the votes cast for and against it at such election." I think that protection in the Constitution is extremely important.

CHAIRMAN GRAYBILL: Very well. Mr. Swanberg wants to add as another sentence, on line 9, at the end of Section 8 as proposed by the committee; the language that no debt or liability will be created in excess of a million dollars unless it has been put to the people at a vote at an election.

Mr. Joyce.

DELEGATE JOYCE: Mr. President. I rise in complete opposition to this amendment of $1 million. It seems to me that if this Convention can't do anything more than face the issue squarely—if we put $1 million in there, all we're going to do is go back to the old system that has been practiced since 1889, of circumventing the Constitution by creating the fiction that we're going to create revenue bonds. And so every debt to build any building—you can't build a building for a million dollars any place. Then, it's always—you have to—before you can build a building, you have to submit the thing out to the people. And it seems to me that that's foolish—and then—because the Legislature—if they need a new building, seems to me they ought to be able to authorize to build it. We've got the protection in now that there's two-thirds of the Legislature must agree on it, and so you can't build any new unit at the University, you can't build any new building that's badly needed at the state Capitol, without having an election. So what the Legislature has done in the past, of course, is they've got around the Constitution by creating certain revenue bonds, as they call them. And, of course that's—it's just a fraud. And so, every time, you have to have a test case then, to see whether or not this is really a revenue bond or isn't, and then you leave it up to the court. If they like the idea, then they say, "Yes, it's okay, it's revenue bonds", and if they don't like it, they can say, "No, it's really a general obligation bond in excess of the $1 million." It seems to me that we ought to get rid of this distinction between revenue bonds. If the State of Montana is going to create any debt, they ought to pledge the full faith and credit of the State of Montana to it because we're going to pay the debt. We shouldn't create any debts where there's a possibility that we won't pay them back. And all it does is in the interest market then, because it isn't a general obligation bond and they charge higher interest. And it seems to me that the state shouldn't create any debt at all unless they intend to pay it. And so, to put $1 million and to require this rigamarole of stifling the state to build any buildings just, seems to me, is a gross step backwards. And I think that we ought to meet the issue squarely here and allow the people of Montana, through their elected representatives, to see whether or not they want to build a building. If they start building too many buildings, of course, the people will take care of them in the Legislature. And it seems to me that we can trust the future legislators to judiciously meet the problems of the time as they arise, rather than tying their hands with these artificial debt limits. And I don't think that the people of Montana are going to be in any serious trouble whatever. If it's necessary to go in debt to build buildings, then how else can you? You can't build a building in one year. None of us can afford to pay for a house in cash. Why shouldn't the state be able to reasonably amortize the construction of their buildings? And so I am vigorously opposed to the amendment offered by Delegate Swanberg.

DELEGATE RYGG: I would like to resist the amendment. In the testimony we heard and in the research we have done, it was pretty well determined that it isn't a very good idea to lock any amount of figures in the Constitution. As I stated before in the presentation, it's—there's inflation to worry about; and I really believe that as you have amended Section 8 now, it has plenty of protection, and I wouldn't want any figures put in there. Thank you.

CHAIRMAN GRAYBILL: The issue arises on Mr. Swanberg's amendment.

Do you want to close, Mr. Swanberg?

DELEGATE SWANBERG: I have a few words, Mr. President. I should note, first, that the limitation proposed does not in any way limit the authority to issue a revenue bond. This talk about bond issues at the University simply does not apply. All of the buildings that I know of at the Universities are financed by Revenue. The fieldhouse at Missoula is financed out of the revenue expected to be derived from the fieldhouse. The dormitories built at Missoula are financed out of the rentals expected to be derived from the dormitories. Those things do not require the vote of the people now, nor would they require a vote of the people if this were passed. All I'm suggesting is when a man's taxes are about to be increased by the construction of a building in excess of a million dollars, I think he should have some control over how that money should be spent. Now, some control is vested here by a two-thirds majority of the Legislature; that's admitted. But I still think that that should apply only to expenditures of a million dollars or less. That gives the Legislature, I think, quite a bit of leeway in the construction of the smaller buildings that they might need. But it still requires, for larger structures of extreme—of large capital expenditure—major additions to the penitentiary, major additions to the hospital at Warm Springs, and things of that nature—it still requires a vote of the people. Perhaps we'll have to get that Warm Springs enlarged, because we may all be going over there before long. (Laughter)

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Swanberg's motion to amend Section 8 by adding a sentence, at the end of it, which is out of the old—out of the present Constitution and has the effect of limiting the debt at $1 million unless put to the people for a vote.

UNIDENTIFIED DELEGATE: Roll call vote.

CHAIRMAN GRAYBILL: So many as shall be in favor, vote Aye on the voting machine; and so many as opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the vote.

Aasheim	Nay
Anderson, J.	Aye
Anderson, O.	Nay
Arbanas	Absent
Arness	Nay
Aronow	Aye
Artz	Nay
Ask	Nay
Babcock	Absent
Barnard	Aye
Bates	Nay
Belcher	Absent
Berg	Nay
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Nay
Brazier	Aye
Brown	Nay
Bugbee	Nay
Burkhardt	Nay
Cain	Absent
Campbell	Absent
Cate	Nay
Champoux	Nay
Choate	Nay
Conover	Nay
Cross	Nay
Dahood	Nay
Davis	Absent
Delaney	Absent
Driscoll	Nay
Drum	Nay
Eck	Nay

Erdmann	Aye
Eskildsen	Absent
Etchart	Aye
Felt	Absent
Foster	Nay
Furlong	Absent
Garlington	Nay
Graybill	Nay
Gysler	Aye
Habedank	Nay
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Nay
Harlow	Nay
Harper	Nay
Harrington	Nay
Heliker	Absent
Holland	Absent
Jacobsen	Nay
James	Nay
Johnson	Aye
Joyce	Nay
Kamhoot	Aye
Kelleher	Nay
Leuthold	Nay
Loendorf	Nay
Lorello	Absent
Mahoney	Aye
Mansfield	Aye
Martin	Nay
McCarvel	Nay
McDonough	Nay
McKeon	Nay
McNeil	Aye
Melvin	Nay
Monroe	Absent
Murray	Nay
Noble	Nay
Nutting	Aye
Payne	Nay
Pemberton	Absent
Rebal	Nay
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	Nay
Rygg	Nay
Scanlin	Nay
Schiltz	Nay
Siderius	Nay
Simon	Nay
Skari	Nay
Sparks	Nay
Speer	Nay
Studer	Aye
Sullivan	Nay
Swanberg	Aye
Toole	Absent
Van Buskirk	Nay
Vermillion	Nay
Wagner	Nay
Ward	Absent
Warden	Nay
Wilson	Aye
Woodmansey	Nay

CLERK HANSON: Mr. Chairman, 16 delegates voting Aye, 67 voting No.

CHAIRMAN GRAYBILL: Members of the committee, 67 having voted No and 16 voted Aye, the amendment fails. Members of—

Mr. Ask.

DELEGATE ASK: Mr. Chairman, could you read Mr. Brown's—what he inserted there on the election—what it says?

CHAIRMAN GRAYBILL: All right. I'll read the section as it is now. "Section 8. State indebtedness. No state debt shall be created unless authorized by a two-thirds vote of the members of each house of the Legislative Assembly or unless authorized by a majority of the electors. State debt cannot be created to cover deficits incurred when appropriations exceed anticipated revenue during any budget period."

DELEGATE ASK: Mr. Chairman, could—would Mr. Brown yield to a question?

CHAIRMAN GRAYBILL: Mr. Brown?

DELEGATE BROWN: I'll yield.

DELEGATE ASK: Mr. Brown. Was it your intent by your amendment that when the question is voted on by the people, that the majority of all the electors—like 51 percent of all the electors—have to vote on it, or just the majority voting?

DELEGATE BROWN: The majority voting was my intention.

DELEGATE ASK: Would Mr. Brown yield to another question?

DELEGATE BROWN: I'll yield.

DELEGATE ASK: Don't you think we should add on the words "the majority voting thereon" to fully clarify this that it's the majority voting on the question, not the majority of the electors?

DELEGATE BROWN: I'd have no objection to that.

DELEGATE ASK: Mr. Chairman. I would move that the words "majority of the electors voting thereon" be added to Mr. Brown's amendment to clearly show that the majority voting, not the majority of all the electors in the state.

CHAIRMAN GRAYBILL: Mr. Ask has made the point that the electors might be larger than those voting and so he suggests adding to Mr. Brown's amendment "or unless authorized by a majority of the electors voting thereon." Is there discussion on that matter?

DELEGATE ASK: Mr. Chairman, maybe I could explain that. The way it was worded, I have a fear that if you had 100,000 voters, you'd have to have 51,000 voting for the proposition. The way it was worded; and the way it is now, if we have a hundred thousand voters and only 50,000 vote, why, 25,001 would carry it.

CHAIRMAN GRAYBILL: The electorate is larger than the voters at an election. All those in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Now, members of the committee, you have before you for your consideration Section 8 as amended. Upon the recommendation of the Chairman of the Revenue and Finance Committee that when this committee does arise and report, that we recommend the same be adopted. All in favor of Section 8 as amended, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: So ordered.
Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. I move the committee recess until the hour of 1:00 p.m. this day.

CHAIRMAN GRAYBILL: The motion is to amend—the motion is to adjourn—to recess until 1:00 p.m. Before I take that vote, I'd like to point out that we expect to finish Revenue and Finance and we do have Legislative on Style and Drafting this afternoon to finish. All in favor of recessing, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: So ordered.

(Convention recessed at 12:05 p.m.—reconvened at 1:12 p.m.)

CHAIRMAN GRAYBILL: The committee will come to order. Mr. Vermillion, will you close the back doors. The committee will come to order. Ladies and gentlemen, when we recessed the Committee of the Whole, we were about to consider Section 9. Will the clerk please read Section 9.

CLERK HANSON: "Section 9. Balanced budget. Appropriations by the Legislative Assembly shall not exceed anticipated revenues during any budget period." Mr. Chairman, Section 9.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I move that when this committee does rise and report, after having had under consideration Section 9 of Proposal 7, that it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: This section is similar to Section 12 of Article XII, although it does not have near the words the present article has. It merely requires the state to operate under a balanced budget inasmuch as it is possible to determine the anticipated revenue. Most states have a similar requirement, and the consensus of the committee was that the state should still try to operate in the black. We feel that it is important enough to ask you to retain it in the present Constitution. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there debate or discussion on Section 9? (No response) If not, members of the committee, you have before you on the recommendation of Mr. Rygg that when this committee does arise and report, after having had under consideration Section 9, that the same be adopted—the same be recommended for adoption. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Adopted. Will the clerk please read Section 10.

CLERK HANSON: "Section 10. Local government indebtedness. The Legislative Assembly shall enact limits of indebtedness for subdivisions and districts of the state." Mr. Chairman, Section 10.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I move that when this committee does arise and report, after having under discussion Section 10 of Proposal Number 7, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: This proposed section leaves the question of local government indebtedness and limits that—and limits the indebtedness up to the Legislative Assembly. This proposed section would leave the Legislature free, if it so desired, to pledge the full faith and credit of local government units to back indebtedness. Such a pledge should result in lower interest rates and a savings to the people of Montana. Now, we know there is an amendment here to retain the old 5 percent limit; and this was discussed at great length in the committee, and it was the feeling that there, again, we would be locking in a figure in the Constitution, which we thought would be undesirable. Whether you have a percentage figure or whether you have a new set of what assessed value is, it seemed to have the same trouble of which you're going to manipulate. Now, we did meet with a group of legislators last Saturday, and I think I mentioned that before, and they did represent the leaders of the Senate Finance and Appropriations Committee, and they all agreed that this wording was satisfactory and that it should be very adequate as far as they were concerned. We talked to a bond-salesman in Minneapolis, and he thought it was good. Again, we talked to Mr. Whitney of Dorsey, Marquart, Windhorst, West and Halladay. They thought this was good terminology and would allow the sale of bonds and present no problem. I don't suppose it makes any difference, but Minnesota has never had a debt limit on local indebtedness and Illinois repealed theirs in 1970. The committee does feel that this short section will suffice for many years to come. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Ask.

DELEGATE ASK: Mr. Chairman, I move the substitute amendment to Section 10. I think the—you have it on your desk.

CHAIRMAN GRAYBILL: Will the clerk please read Mr. Ask's amendment.

CLERK HANSON: "Mr. Chairman. I move to amend Section 10, page 14, lines 10 through 15—13 through 15 of the Revenue and Finance majority report, to read as follows: 'Section 10. Local government indebtedness. Any local government unit, school district, or any other political subdivision may incur indebtedness not to exceed 5 percent of the assessed value of the taxable property therein. Each local government unit, school district, high school district, or political subdivision shall have separate and independent bonding capacities within the limitations of this section. By a 60 percent vote of the electors voting thereon, the debt limit may be increased an additional 5 percent of the assessed value. The debt limits in this section shall not apply to obligations primarily payable from revenue or sources other than property taxes, whether or not the full faith and credit and taxing power of the issuer is also pledged for the payment of the obligation and interest thereon. For purposes of this section, assessed value shall be determined by methods or factors established by law. No indebtedness or liability shall be incurred for any single purpose to an amount exceeding the sum set by law without the approval of a majority of the electors voting on the question as provided by law.' Signed: Ask."

CHAIRMAN GRAYBILL: Mr. Ask, you also have an amendment to your amendment. Do you want to—do you want us to explain that?

DELEGATE ASK: Yes, I would like to have that inserted now. After the word "school district", in the second sentence, add "community college district". Mr. Champoux requested this and felt it should be added. I had the word "political subdivision", and we may be able to clean up the wording here to include the various districts.

CHAIRMAN GRAYBILL: Very well, Mr. Ask. I think you all have his language before you—and he wants to put on the fifth line of his Section 10, after the word "school district", a caret and then the words "community college district". All in favor of that amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: All right, that amendment to Mr. Ask's amendment is allowed, and Mr. Ask now has an amendment that has the effect of changing local government indebtedness from the formula in Section 10 to a 5 percent limitation, not to apply to revenue bonds, et cetera.

Do you want to explain it, Mr. Ask?

DELEGATE ASK: Yes. Mr. Chairman, fellow delegates, this amendment I've put in is not a spur-of-the-moment thing. I've discussed this with Revenue and Finance for two or three weeks since we've been here, and they've discussed it, been very fair about it, and we just have a difference in our philosophy on this particular point; and they knew it was coming up, and I think it's a good time to discuss it, since we went over state indebtedness quite thoroughly. Now, I submitted this amendment not because I don't trust the Legislature in setting the limit of local government. I do it for the purpose of getting the Legislature out of local government to a certain extent. I am on the Local Government Committee, and many of the witnesses that we heard—legislators and people in local government—complaining that every time they turned around they had to go to the Legislature to get some additional mill levy or some type of provision that they can do something in their local government. And even the committee, now—the Legislative Committee that's working on local government, is working real hard to broaden the laws for local government so that they can operate more on their own without coming back. Understand that a terrific amount of the legislation introduced every year in the Legislature is items pertaining to some unit of local government—give us a little more power here, a little more here, a mill levy here. And I think on a—you know, our old Constitution has a 5 percent limitation, and if we adopt the majority report, they're going to—here's another item that they have to go to the Legislature for, to get additional authority to bond. I don't know what the Legislature is going to do, but let me give you an example. Say the Legislature says, "Well, 5 percent doesn't sound too bad. They're getting along on it now. Let's set it at 5 percent and let them run like that." All right, say the city of Billings or Great Falls bonds for various things here and they get up about 4 percent. All right, then they get a project that they're going to have to go over the 5 percent a little bit, maybe 6 percent. What do they have to do? Well, the planners will have to say, "Well, the Legislature set it at 5 percent, so we've got to do our planning and go there next time and try to get them to raise it to 6 or 7 percent." And if—many of you know that have had bond issues on your local level, they get real hectic sometimes. You get a faction on this side and a faction on that side. So what happens? Here comes both factions to the Legislature and says—one says, "Raise it to 7 percent so we can get our—we can built our—do our—finish our project and bond." The other side says, "Gosh, we don't want it. Don't raise it. Don't raise that limit." Now, I don't—if I were a legislator, I wouldn't feel that I should set the—decide what Great Falls wants to do or what Billings wants to do. I think that's up to the local people, and we're just adding another thing for the Legislature to do. Now, I think this—my amendment here, gives you all the flexibility in the world, and this is our form of government. If the people on the local level want to do something, let them vote on it and let them do it. Now, if you'll read my proposal, it says 5 percent. Now, some of them said, "Where did you get the magic figure of 5 percent?" Well, that's our present Constitution, and they did have trouble with it years ago when our valuations were lower, when they equalized; it came up and as far as I know, I don't know of a local government unit that has trouble bonding to build a new school, because the elementary and high school each have separate bonding capacities. So 5 percent is a starter. I checked the Revenue and Finance book and I checked counties, and, of course, the counties are way—they have tremendous capacity left under this 5 percent, the present provision, if they want to use it. And I think the only ones that would be close would be school districts. So what have we done to solve this problem? Well, in this proposal, you can—if the local government unit needs it, rather than go to the Legislature they just put on the ballot on this bond of increasing that 5 percent. The only thing about it, they have to have a 60 percent vote. In other words, not of all the electors, but 60 percent majority of the people voting thereon. Now, that's kind of a break, because, you know, you don't have to be a taxpayer now to vote on bond issues. And this is just a little bit of a break to taxpayers too—and if the whole community wants it, well there would, of course, be no problem. But, see the flexibility here? You've gone from 5 percent, that's adequate now, to an additional 5 percent if the people vote on it in that particular locality. Now, Mr. Rygg mentioned the problem of—the Legislature might want to pledge the full faith and credit of a local government unit to the—to other types of bonds to get a lower interest rate. Well, I have provided for that in here: "The debt limits in this section shall not apply to obligations primarily payable from revenue or sources other than property, whether or not the full faith and credit of the taxing power—is also pledged." In other words, the people could vote to pledge their full faith and credit on a revenue bond, and this makes for cheaper interest rates. And, of course we've—they had trouble previously on what they meant by "assessed value" under the old section, so I have a sentence in there: "For purposes of this section, assessed value shall be determined by methods or factors established by law." This is the only way I think you can do it to make some clarification. In other words, the Legislature would have to set the methods of assessed value, and this is done for the purpose of the validity of the bonds. And, of course, someone said you can—all the Legislature has to do is just double the assessed value and you get double bonding. Well, if they do that, why, that's up to them; but I mean this is something that's—you have to have it in there for the validity. Now, the last section—or the last paragraph there, it provides: "No indebtedness or liability shall be incurred for any single purpose to an amount exceeding the sum set by law." On the present time, the county, you know, is limited to $10,000 of indebtedness, and this is rather low—it's rather ridiculous—so this amount should be left to the Legislature. If they want to buy a caterpillar or something like that that costs forty—fifty thousand dollars—maybe this limit should be raised; I don't know. But this we leave up to the Legislature. But this shows that you can't have indebtedness set by the Legislature without it being put to a vote of the people. I recall, once as county attorney I had a small school district that wanted to remodel their school building, put in new windows and just remodel it, and I don't remember what it cost, but we had to have a bond issue for it, which was rather ridiculous, I think. The bond issue cost a good part of what it cost, but the district just didn't have the money. Now, this gives them flexibility so these minor things that they don't have the money for, they can at least do something. The Legislature can provide for that. Otherwise, above this sum all the indebtedness must be approved by a majority of the electors voting on the question as provided by law. Under this provision, all the Legislature has to do is set the election methods, which we already have in the statute; and I therefore feel that this proposal is far more flexible and modern and far-reaching than the majority proposal. At least this is my philosophy. the Legislature doesn't have to tinker with it, and this local indebtedness is a local problem, and with this they can go 5 percent and an additional 5 percent. Now, someone has said, "What if they need more than 10 percent?" I don't know. This would be some time in the future, and if they ever get to this point, I think it may be—better be submitted to the people to see whether they want to go higher, or we'd better start looking at other methods of paying for bonds, other than property. And I think, to the taxpayers of this state who are going to vote on this, I think this at least gives them some security; some feeling of saying, "Well, we have the say in our local community of what we're going to do," and we—they don't have to depend on the Legislature. I don't know—this could work the other way. The Legislature may be real conservative sometime and say, "We're going to limit you to 3 percent," and they won't change it; you might stifle your school districts from building something. Or they may get real liberal and say 25 percent, 50 percent. This, I submit, gives a real flexible program for bonding and all local government units, and I think it's real workable. We don't have to fool with the Legislature. And I think it gets the job done, and I would therefore submit that this particular section should be adopted over the majority proposal. Thank you.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I rise to support this amendment. We had talked it over a little earlier. I, too, talked to Mr. Rygg and various members, and we discussed this a good deal. I'm not challenging too much what they have done here, but I would like to point out just a few things that this would do if the Legislature should decide to raise this debt limit very much. It would dilute the collateral in these school districts by making your debt too high against the collateral, which is the property that's there. This would make it more difficult to sell bonds when you do want to sell them. For the same reason, it could very well increase the interest rates that you would pay, because when they set these interest rates, it's set by how good your collateral is. So if you had too much debt there, why, you'd be paying much more interest rates on the money you did borrow. It could decrease the sale value of your property—your home, any other property you had—because if it has a large indebtedness on it, you know the person that's going to buy this is not going to be quite so anxious to. There is room to increase it if anyone got in trouble. They could, certainly—60 percent of the people could increase it. Now, a little bit on the sale of these bonds. I think Mr. Rygg mentioned that he had talked to different companies, and I know that he did and I know that's what they told him. But these bonds are sold very competitively, you know, and when you've got the good collateral, you get a lot of people in there bidding on them. Just to give you a little illustration: Rosebud County sold some bonds, I think about $600,000 worth, last fall, and they were able to sell them at 4.16. Now, if anybody can match that, they got one awfully good deal, because most of the surrounding counties were paying up to 6 percent. We were able to do that because we do have collateral. We don't have a big debt limit in Rosebud County. And I think these are all valid arguments that if you take this lid off, you're not going to be able to sell these bonds at that low rate of interest and you're not—to be able to sell your property at the price you may want for it; and that's just a few of the reasons. I can think of others, but I won't take any more time. And I support Mr. Ask's amendment. Thank you, Mr. Chairman and delegates.

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, I, too, rise in support of this amendment, with one very minor modification. I think that for a point of clarity, after the word "60 percent", the word "affirmative" should be added ahead of "vote" to clarify the fact that it needs a 60 percent affirmative vote on the issue. Thank you.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Well, I rise in resistance of the substitute motion—or amendment, and it isn't so much that I'm scared of debt or debt should be done. I was just thinking when we were talking about this; I just got off a school board when I come up here, and we had a budget of over a million dollars, of which we could—we were authorized to do without a vote of anybody, and yet we had a debt limit over there of which the interest—principal and interest only amounted to $50,000 of that million dollars, or roughly 5 percent. I think you're overemphasizing debt on this thing. And I wish to point out why we want to make it quite broad at this point and why we restrict it, and we certainly accepted the amendments on the state debt. There is nobody to limit the State Legislature relative to state debt, but for over, oh, 80 years, the Legislature of Montana has never given the state, the counties, and local governments very much power in fiscal matters. And we really don't feel it will change very much in the future except as to probably charter powers in the local government issue, and we intend this section to override any powers the local governments might get by charter relative to going in debt. But the Legislature should set the debt limits. One—and it has to be with the rest of our article. One is the definition of what is assessed value on property. Now, by the exemptions granted that might change, and so your debt limit goes up and down. It could be very well within the time that this Constitution is in effect that local governments will have other taxing powers and bases besides property—they might have income tax powers; they might have excise taxes—and they might want to pledge a certain amount of those revenues to the payment of bonds. And I think the Legislative Assembly should be able to control and set those debt limits. Now, the present constitutional sections relative to this have two or three pages after each section, of Supreme Court interpretations as to what is meant by these sections. They have a number of cases in litigation, and that has been costly both to the taxpayer in bond interest rates, in construction of buildings, and inflation of the cost of those buildings. And by putting this much verbiage again into a debt limitation section, you are again inviting a number of lawsuits relative to whether the issuance of these bonds are legal or in violation of the constitutional limit. By leaving it to the Legislature, if a mistake is made in this verbiage, they can change it themselves the next time. And relative to the interest rates, looking at Mr. Ask's section very—I'm not criticizing it, because it's fairly good—but the last sentence, relative to what is assessed value, that leaves it to the Legislature to define what assessed value is on which to base your 5 percent. Now, the Legislature could say the assessed value is 40 percent of true value one year for this purpose, not for any other appraisement purpose. They could say 20 years [percent] the next year for that purpose, and they could go up to 80 percent the year after that for the same purpose, and the debt—defining what assessed value is meant by this section. So really, the Legislature can change this bonding indebtedness as to property taxes as they go along from year to year. So it doesn't really mean what it says along those lines. Now, as to the last paragraph itself, the Legislature has that authority at the present time to set limits as to what they might borrow, and over that amount they have to go to the people for a vote. I can think of Mr. Ask's section, we are going to have a lawsuit right off the bat, because under the old limits there were prohibition types of things: "no county government shall incur indebtedness"; and the Supreme Court has interpreted that to mean it is not self-executing, that the state must still authorize the indebtedness, and the state can set limits even under the old one. He has changed this just a little bit to say that any local governments can incur indebtedness. Well, we get back to the question again—is it self-executing or not? Actually, by enacting our section, we do not change any of the present indebtedness limits, because they are all enacted by statute now, and they're all 5 percent, as you see in these original two articles. So what it amounts to on his thing is that it sounds good but it really doesn't make too much difference; and all it does is, the verbiage invites lawsuits. And especially where he has stated that by a 60 percent vote, which is more restrictive than the present Constitutional limit on water and sewer—they can go above the 5 percent now on a majority vote. But then he also says by—the debt limits do not apply to obligations of revenue where you give the full faith and credit of the local unit to those things. Well, you're just—there's a hole that can be very broad. You can issue—say your debt limit is $2 million for high school purposes or city purposes, but you decide to float a water bond issue and you want a little better rate of interest so you pledge the full faith and credit of the city against that, which means all taxing power of the city against that, and the water bond issue is $5 million, so there you've raised your limit up to another $5 million. I think we're much better off. And I think we can have confidence in the Legislature of this because their past experience has been such as they've been very good and very limiting on the powers of local government to create any debts in Montana. And I think we're much better off to leave it to them this time, and I don't think they're going to abuse any of that discretion which we give them to them here. And if we try to legislate it, we're going to get ourselves in trouble again and we're going to have a multitude of lawsuits to decide.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. President, I rise in support of the majority report and against the amendment, because this seems to me that this might be an excellent statute that the next session of the Legislature could pass in pursuance to the authority now given them by the Section 10. But it may work for years and years and years and be a splendid way of handling—giving the flexibility that Delegate Ask asks for; but again, to my mind at any rate, it illustrates the lack of wisdom of trying to write a statute into the Constitution. It may very well be that some situation comes up that is not covered by this statute and so you have to amend the Constitution in order to do it. It seems to me that we ought to give the Legislature flexibility to write whatever laws they may in the future, to correct mistakes when they do make them; and I'm glad to be still on the same track that I'm opposed to writing statutes into the Constitution. It seems to me that this is, however desirable and however well thought out this particular statute is at this time, that it's impossible to project into the future whether or not it will fit the situations that may arise, and I'm willing to leave the Legislature some flexibility to write whatever statutes are necessary to meet changing times in the future. And I therefore oppose the amendment.

CHAIRMAN GRAYBILL: Mr. Rollins.

DELEGATE ROLLINS: Mr. Chairman, I'd like to ask Mr. McDonough a question, please.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Yes, sir.

DELEGATE ROLLINS: Mr. McDonough, what would be the effect, aside from heart failure and the end of the world, if I would ask you what would happen if there were no provision in the Constitution concerning the indebtedness for local governments?

DELEGATE McDONOUGH: The Legislature could do—ever—any area—whatever they wanted to and they could set the debt limits. The only thing we've done here is, we've made it mandatory for them to set some debt limits. If we eliminated 10 altogether, they could still set the debt limits.

DELEGATE ROLLINS: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rollins.

DELEGATE ROLLINS: My good friend, Tom Ask, and I have had many interesting conversations which are most frustrating because the madder I get, the more calm he becomes. (Laughter) All I've been—ever tried to do with Tom was to get him to give up trying to improve the horse and at least accept the automobile. (Laughter) Now, it appears to me that he's going back to the same kind of thing with a debt limitation which may be entirely unrealistic. He says there's no magic to 5 percent. Even North Carolina said 8 and 7. I wonder if there's some way—we've talked in the Local Government Committee consistently about giving the local people more ways to carry out their affairs and—but we didn't talk very much about the debt limitation, because we left that to the tender mercies of the Taxation and Finance Committee. Maybe Mr. McDonough's last idea that if we would just do away with any mention whatsoever, then maybe the Legislature would have amnesia and forget to apply such limits. And then perhaps we'd have that happy day when the local people might be able to make a few decisions without having the "Big Brother" looking right down the back of their necks.

CHAIRMAN GRAYBILL: Is there any further discussion? (No response) If not, do you want to close, Mr. Ask?

Oh, Mr. Kamhoot, do you want to speak?

DELEGATE KAMHOOT: Mr. Chairman, just one short observation. The further we go, the more I think we should have trapped the Mitchell Gang while we had them over in their lair. Thank you, Mr. Chairman. (Laughter)

CHAIRMAN GRAYBILL: Mr. Drum, you want a rejoinder?

DELEGATE DRUM: I'm—in defense of the Mitchell Gang, Mr. Chairman, I'd like to say I think the spirit behind this section was that we felt that the cities and the counties should be given complete authority to run their own business, but don't give them enough authority that they can go broke; and I think the committee feels that we've accomplished this in this writing.

CHAIRMAN GRAYBILL: Mr. Ask, do you want to close?

DELEGATE ASK: Yes, Mr. Chairman, just a few remarks. My good friend, George Rollins, mentioned about the horse and the automobile, and I think that if you take the majority, you're going back to the horse and buggy days. I saw in the paper this morning we're rated at 1920. I would put this about 1905, because you're throwing everything back to the Legislature again that we've been trying to get away with with local government. And I think if we do anything coming out of this Convention, is having a provision in our Constitution to improve local government so the people can run their government the way they want to run it on a local level without keep coming back to Helena. And I submit this Section 10 here, where we have it—or the way I have amended it, gives your great, adequate bonding capacity of these local government units, but you leave it up to them. They don't have to come back here again, because you're—I think many of you who have been here before as legislators know the squabbles and hassles they get into when they want to increase a mill levy for roads, for counties and everything you have. Mr. McDonough mentioned that the Legislature has been very conservative hanging onto the reins of local government. Well, sure they have. That's what we're trying to correct here today. They're hanging on so tight that they can't do anything, and we've given them broad capacity here—5 percent and another 5 percent if they vote on it—and we're going ahead. We're being progressive here. And maybe this isn't the right formula, but certainly 5 percent is greatly adequate right now, and you got another, that's doubling it; and if it ever gets to the point they ever need more, I think the people ought to vote on it again on a constitutional amendment. Mr. McDonough mentioned that we have the old section, there's a lot of lawsuits over it—and I agree there were lawsuits. But I also did quite a lot of work on this particular section and I've handled quite a few bonding matters, and I feel that the wording in this particular section has obviated a lot of the questions that the old Constitution provision had. And he further said that there's a provision in here that they can lend their full faith and credit to other types of revenue bonds and therefore you could have—you could exceed your bonded indebtedness; but the people have to vote on this and if you can give your full faith and credit—the state—you can have that power—if you give your full faith and credit, you can get better interest rates, but the local people have some control over it. They're not—they know what's going on. So I say we're taking the shackles off of local government by this amended Section 10, and if we go back to the Legislature again when you come to our Local Government Article, we'd just as well go back and put the whole cotton-picking thing back in. Because if you want to shackle them that much, you'd just as well shackle them all the way down the line. Thank you.

CHAIRMAN GRAYBILL: All right, the question is on Mr. Ask's motion that we amend Section 10 by inserting the language that he has supplied you here in place of the committee's language.

UNIDENTIFIED DELEGATE: Roll call.

CHAIRMAN GRAYBILL: And we'll have a roll call vote. You all have this. Does anyone want this read?

(No response)

CHAIRMAN GRAYBILL: I think not. So many as shall be in favor of Mr. Ask's amendment to Section 10, please vote Aye on the voting machines; and so many as shall be opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Will the clerk please take the ballot.

Aasheim	Absent
Anderson, J.	Aye
Anderson, O.	Nay
Arbanas	Excused
Arness	Absent
Aronow	Aye
Artz	Nay
Ask	Aye
Babcock	Absent
Barnard	Nay
Bates	Absent
Belcher	Excused
Berg	Aye
Berthelson	Nay
Blaylock	Nay
Blend	Absent
Bowman	Aye
Brazier	Nay
Brown	Nay
Bugbee	Aye
Burkhardt	Nay
Cain	Aye
Campbell	Absent
Cate	Absent
Champoux	Nay
Choate	Aye
Conover	Aye
Cross	Nay
Dahood	Nay
Davis	Aye
Delaney	Absent
Driscoll	Nay
Drum	Nay
Eck	Aye
Erdmann	Aye
Eskildsen	Excused
Etchart	Aye
Felt	Excused
Foster	Nay
Furlong	Nay
Garlington	Aye
Gysler	Aye
Habedank	Aye
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Nay
Harlow	Nay
Harper	Aye
Harrington	Absent
Heliker	Nay
Holland	Excused
Jacobsen	Aye
James	Aye
Johnson	Aye
Joyce	Nay
Kamhoot	Aye
Kelleher	Nay
Leuthold	Aye
Loendorf	Nay
Lorello	Absent
Mahoney	Aye
Mansfield	Aye
Martin	Aye
McCarvel	Nay
McDonough	Nay
McKeon	Nay
McNeil	Aye
Melvin	Nay
Monroe	Nay
Murray	Aye
Noble	Aye
Nutting	Nay
Payne	Nay
Pemberton	Absent
Rebal	Nay
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Nay

Romney	Nay
Rygg	Nay
Scanlin	Nay
Schiltz	Nay
Siderius	Absent
Simon	Aye
Skari	Nay
Sparks	Absent
Speer	Nay
Studer	Aye
Sullivan	Nay
Swanberg	Aye
Toole	Nay
Van Buskirk	Absent
Vermillion	Nay
Wagner	Nay
Ward	Nay
Warden	Absent
Wilson	Aye
Woodmansey	Nay
Chairman Graybill	Nay

CLERK HANSON: Mr. Chairman, 34 delegates voting Aye, 46 voting No.

CHAIRMAN GRAYBILL: 46 delegates having voted No and 34 Aye, the amendment fails. We're back considering Section 10 as submitted by the majority report. "The Legislative Assembly shall enact limits of indebtedness for subdivisions and districts of the state." Is there other debate?
(No response)

CHAIRMAN GRAYBILL: Members of the committee, you have before you, on the recommendation of Mr. Rygg, the Chairman of the Revenue and Finance Committee, that when this committee does arise and report, after having had under consideration Section 10, that it recommend the same be adopted. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: Section 10 is adopted. Will the clerk please read Section 11.

CLERK HANSON: "Section 11. Use of loan proceeds. All money borrowed by or on behalf of the state, or any subdivision or district of the state, shall be used only for the purpose or purposes specified in the law authorizing the loan." Mr. Chairman, Section 11.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 11 of Revenue and Finance Proposal Number 7, that it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: (Inaudible)

DELEGATE RYGG: This section is practically identical to Section 3 of Article XIII. It attempts to guarantee proper management of borrowed funds and should prevent misuses or diversion of that money. We believe it is an important enough matter to be retained in the new Constitution. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there any discussion?
(No response)

CHAIRMAN GRAYBILL: If not, members of the committee, you have before you for your consideration on the recommendation of the Chairman of the Rules—of the Revenue and Finance Committee that when this committee does arise and report, after having under consideration Section 11, that it recommend the same be adopted. So many as are in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: So ordered. Will the clerk please read Section 12.

CLERK HANSON: "Section 12. Strict accountability. The Legislative Assembly shall enact the necessary laws to insure strict accountability of all revenues received and money spent by the state, subdivisions and districts thereof." Mr. Chairman, Section 12.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 12 of Revenue and Finance Proposal 7, that it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: This section is broad in scope, but it covers the same ground as the detailed sections of 13 and 14 of the present Constitution. It also conveys the intent of specific appropriations covered in Section 10 of Article XII. Now, if this section that we have wasn't covered specifically enough, we feel that the new section that was adopted the other evening—I think it was Section 18 which was added to the Legislative Article—I think it was proposed by Mr. Mahoney, and I think it was the old 30—Section 34, Article V. So with that in the Legislative, plus this, I think we have—we're covered very well. And we feel that there must be an increased accountability of all revenues of the state, and the Legislature must necessarily set up the machinery and the details of accounting procedure. They can do all that. We do feel it is imperative that the Legislature establish a unified accounting system for all governmental units throughout the state; but because this is not of constitutional nature, we will have that on our report to the Legislative Council. As near as we can tell, the present constitutional requirements on deposits, cash flow, are not adhered to as they were supposed to. We feel this is a necessary part of the Constitution and we would ask that you retain it. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Conover.

DELEGATE CONOVER: Mr. President, will Mr. Rygg yield to a question?

CHAIRMAN GRAYBILL: Mr. Rygg, will you yield?

DELEGATE RYGG: Yes, I'll try.

DELEGATE CONOVER: In there, where you say, "to insure strict accountability of all revenues received—and spent by the state"—legislative—would this apply to the legislative audit that's been set up by the last Legislature—the machinery they already have?

DELEGATE RYGG: Yes, I think they would be a part of it, yes.

CHAIRMAN GRAYBILL: Is there other comment?
(No response)

CHAIRMAN GRAYBILL: Very well, members of the committee, you have before you for your consideration, on the motion of Mr. Rygg that when this committee does arise and report, after having had under consideration Section 12 of the Revenue and Finance Proposal, that it recommend the same be adopted. So many as are in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, Nay.
(No response)

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted. Will the clerk read Section 13.

CLERK HANSON: "Section 13. Investment of public funds. The Legislative Assembly shall provide for a unified investment program for public funds and prescribe the rules and regulations therefor, including the supervision of investment of surplus funds of all subdivisions and districts of the state. The separate existence and identity of each and every fund involved as a part of the unified investment program shall be strictly maintained. An audit of the investment program shall be conducted at least annually and submitted to the Governor, Legislative Assembly and Chief Justice of the Supreme Court." Mr. Chairman, Section 13.

DELEGATE RYGG: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 13 of Revenue and Finance Proposal 7, that it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: This proposed section on investment replaces all of Article XXI in the present Constitution. Most of the provisions in that article are obsolete. In fact, if the public school fund had not been added to the Montana trust and legacy fund in 1938, the article would have no effect whatever. The proposed section stresses the importance of a unified investment program for all public funds. Such a program has been sought in Montana since 1924 and has only recently been accomplished through executive reorganization. The committee feels the importance of unity, professional treatment and supervision of all public fund investments should be stressed at the constitutional level. Because public money is such an important trust for the people of Montana, the investment program should be audited at least annually. The sentence on separate identity of funds in the public fund investment program was added to insure proper distribution of interest to the individual funds. Although public funds should be invested as a unit to insure a larger return, the interest from that unified program should be distributed on a pro rata basis, depending on the size of the individual funds. The separate fund sentence should insure that distribution. The regulation and limitation of the investment program and the administrative structure of the investment program is left up to the Legislative Assembly. At least two restrictions on the investment program will remain in force in the Constitution. Those provisions in Article XI and the Enabling Act deal with the land grant money. The Legislature is best equipped to make decisions concerning investment opportunities for state money. The obsolete nature of Article XXI illustrates the futility of trying to prescribe an investment program and investment details at the constitutional level. The scope of the Legislature's supervision should also include surplus funds at the local level. Although the Legislature may well leave the handling and investment of such funds in the hands of local governments, its supervisory powers will insure their careful handling and treatment. We feel that this is the better of the proposals. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Artz.

DELEGATE ARTZ: Mr. Chairman, I move to amend Section 13 by adding the following language on line 4 of page 15, after the word "court": "With the exception of moneys contributed by individuals to retirement funds, no public funds shall be invested in private corporate capital stock." This in effect, then, is minority Proposal Number 2, which you will find on page 36. In the original typing, one vital provision was inadvertently left out, and sheets have been passed out showing that the language on page 36, line 12, should have inserted after the word "maintain" the following sentence: "An audit of the investment program shall be conducted at least annually and submitted to the Governor, the Legislative Assembly and Chief Justice of the Supreme Court." In effect, then, all that the minority is attempting to do is add the one sentence stating that, with the exception of moneys contributed by individuals to retirement funds, no public funds shall be invested in private corporate capital stock.

CHAIRMAN GRAYBILL: Now, Mr. Artz, you've lost the Chair; I don't know about the rest of them. I understand that you have an amendment and I understand that it's—is it the minority—is it the language on page 36?

DELEGATE ARTZ: Mr. Chairman, after you insert the following sentence after the word "maintained" on line 12—

CHAIRMAN GRAYBILL: All right. Well, you've got to go slow so we can write that down then.

DELEGATE ARTZ: They had the sheets passed out, Mr. Chairman.

CHAIRMAN GRAYBILL: Well, is that the sheet signed by Mr. Swanberg?

DELEGATE ARTZ: No. That's the one that says, "Additions Required to Revenue and Finance Committee Proposal on Constitutional Revision Number 7."

CHAIRMAN GRAYBILL: Well, the Chair does not have a copy thereof.

DELEGATE ARTZ: The wording is the same—

CHAIRMAN GRAYBILL: Just a minute. Let's get me a copy of it, somebody. Are there copies on everybody's desk? There should be one on my desk back there then. When you instruct pages to pass things out, it's helpful if you include the clerk and the Chair. Oh, nobody has it? Mr. Artz, is it passed out in the body?

DELEGATE ARTZ: Mr. Chairman, it was left with the Chief Clerk and I was told that it would be passed out. As far as I know, everybody has it.

CHAIRMAN GRAYBILL: Now I see it, Mr. Artz. It's a sheet of paper with the first two or three inches only typed on, in case you're looking on your desk for it. Now, Mr. Artz, do I understand that you want to replace—do you want all of this other language on—from line 6 to 15 on page 36, and should that replace Section 13?

DELEGATE ARTZ: With the addition, Mr. Chairman, of the following words after "maintained", which are on page 29, line 18, 19 and 20. All the minority is attempting to do is add one sentence to the majority report.

CHAIRMAN GRAYBILL: And the one sentence is the—"An audit of the investment program shall be conducted at least annually"?

DELEGATE ARTZ: No, that's the one that has to go in the minority. The one we're adding to the majority is the words on lines 12, 13 and 14 and 15 on page 36, which start: "With the exception of moneys—"

CHAIRMAN GRAYBILL: All right, now, your amendment consists, then, of adding the phrase at the end of Section 13: "With the exception of moneys contributed by individuals to retirement funds, no public funds shall be invested in private corporate capital stock." Is that right?

DELEGATE ARTZ: That is correct, Mr. Chairman.

CHAIRMAN GRAYBILL: And then where do we add the words "an audit of the investment program shall be conducted"?

DELEGATE ARTZ: The—Mr. Chairman, the words: "An audit of the investment program—" were included in the original wording of the majority, and if we're going to make the minority—then it would be on page 36, line 12, after the word "maintained" and before the word "with".

CHAIRMAN GRAYBILL: I see. Mr. Artz, would it be fair to say, on page 15, which is the minority—which is the majority report, that we could add your sentence: "With the exception of moneys contributed to individuals—by individuals to retirement funds, no public funds shall be invested in private corporate capital stock"? If we added that on line 1 on page 15, after the word "maintained", then we would have your amendment correct?

DELEGATE ARTZ: That's correct.

CHAIRMAN GRAYBILL: That's right?

DELEGATE ARTZ: Come after the word—main thing is to get that one sentence in, Mr. Chairman.

CHAIRMAN GRAYBILL: All right, let's have it the sense of Mr. Artz' amendment that on page 15, line 1, after the words "program shall be strictly maintained", we add a sentence—and the sentence is found on lines 12 through 15 on page 36 and the sentence refers to not investing in private corporate capital stock.

Mr. Artz.

DELEGATE ARTZ: Thank you, Mr. Chairman. The basic fundamentals of the minority report are quite simple. We maintain that the criteria for investment of public funds is different than investing personal or private funds. We say that the priorities should be in the following order: number one, security; number two, that the funds should be invested in Montana as much as possible; and that the final consideration is the return on the investment. We had a lot of testimony which worried me, as Mr. Mahoney says. The emphasis was on return on investment rather than security. I think a good example is a statement made by one of the committee members right here on this floor when we were having our first Romney hearing, and I quote: "You don't find the big red apples next to the trunk of the tree; you find them near the end of the limb." I don't know how many of you have climbed out to the end of that limb and found that the big red apples dropped to the ground and you went after them. I have. Now, it's all right for me to lose my own money, but I don't think we should let the Legislature have the power to lose the public funds. We are violently opposed to gambling with state funds and taking a chance that this limb might break; and any time you put money in private corporate capital stock, you are gambling, because you are down at the very bottom of the balance sheet. You have no security except the earning power of that corporation. There is no assets to back it up unless they're left over after you've taken care of bonded indebtedness and all of the other liabilities. Common stock is the last item. We were told by testimony that the stock market would act as an offset to inflation. It could be, but we also offer, quoting from an advertisement in the *Great Falls Tribune* by one of the local banks, that money invested at five and three-quarters percent for 12 years will double. We think that's adequate safeguards against inflation. By the fact that the majority committee report leaves this up to the Legislature, I think you can see that there were pressures exerted on the committee to permit the Legislature to invest our public moneys in the stock market. Now, if the committee was pressured, I am sure that same pressure would be applied on the legislators in the future, and I think personally we've dumped enough things in the legislators' laps. I think we should give them a little barricade to hide behind, at least in one instance. Our last point: when you buy common stock in a corporation you, in effect, own part or all of that corporation, depending upon how much stock you buy. Now let us say that we're going to follow rule number two—keep the money in Montana. The only way we can do that then is to buy in Montana corporations, and we've had some good development corporations come around and they've had some real good salesmen to sell the stock. That's their job. So they sold the controlling interest in one of these development corporations. Everybody would say, "That's fine, we're helping Montana." But who is going to vote that stock? Now we get into another issue. Let's say that this particular corporation puts out some of those obnoxious fumes that we've heard about over in Missoula—and which I have smelled—and the corporation comes around, they says, "Now here, listen here, fellows, we cannot go ahead and put in all of this necessary equipment to keep those fumes down; if we do, you're not going to get any return on your investment." What position would that put the Legislature in? Now the pages have been sending these little books around and they've been getting your autographs on them. I've been around with my little book, too, and I didn't put autographs down, I put X's; and I have 53 X's of people that said they felt sympathetic towards my ideas. With that, I close. Thank you. (Laughter)

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. President, I would like to make an amendment. I move to delete "and Chief Justice of the Supreme Court".

CHAIRMAN GRAYBILL: What line?

DELEGATE BROWN: Well, there's no line to it because it was omitted, but it was read into the amendment.

CHAIRMAN GRAYBILL: That's line 4 on page 15?

DELEGATE BROWN: You're correct. That's right.

CHAIRMAN GRAYBILL: You move to delete "and Chief Justice of the Supreme Court"?

DELEGATE BROWN: Yes, sir. Then we'd need an "and" between "Governor" and "Legislative Assembly".

CHAIRMAN GRAYBILL: The Chair is thinking, Mr. Brown. You are assuming that Mr. Artz' amendment includes that last language there, which is part of the majority report.

DELEGATE BROWN: I'll make the same motion on the majority if the minority fails.

CHAIRMAN GRAYBILL: Wouldn't it be better to get the other one out of the way?

DELEGATE BROWN: Yeah, we could do that.

CHAIRMAN GRAYBILL: One problem I have is, that I'm—you're stacked up behind two other amendments to this section and if I let you in here, we may be debating something we don't need to debate.

DELEGATE BROWN: I'll withdraw it till the time proper.

CHAIRMAN GRAYBILL: Will you hold it for awhile?

DELEGATE BROWN: You bet.

CHAIRMAN GRAYBILL: All right, the issue is on Mr. Artz' motion to add this sentence, found on page 36: "With the exception of moneys contributed by individuals to the retirement funds, no public stock shall be invested in private corporate capital stock."

Mr. Berg.

DELEGATE BERG: Will Mr. Artz yield to a question?

CHAIRMAN GRAYBILL: Mr. Artz, will you yield?

DELEGATE ARTZ: I yield.

DELEGATE BERG: Mr. Artz, I'm concerned primarily with the words "with the exception of moneys contributed by individuals to retirement funds". Now, for example, in the police court—or in the police retirement fund or in the firemen's retirement fund, individually police or firemen monthly contribute towards a retirement fund; likewise, municipal or city funds are put with that. Are you going to require the city or whatever investment organization is that takes care of these funds to keep a separate accounting of the investments of those funds, distinguishing between what individuals contribute as compared to what the municipality does?

DELEGATE ARTZ: Mr. Chairman, the funds—the retirement funds that I have been acquainted with, the amounts contributed by the individuals are being kept track of, and I maintain that those are individual funds and that those people should have the right to have that money invested as they would like. I would not like to restrict you or myself on what we do with our own money, but the part the state puts up, I want it restricted. Does that answer the question?

DELEGATE BERG: Not entirely, because the ones that I am familiar with—those that relate to police or fire funds—are not kept separate. They are invested together; and I think the same is true with the Public Employees' Retirement System. Individuals contribute to it, so do the municipality or the state; but the funds are all invested alike.

DELEGATE ARTZ: I cannot see that in this computer age that that would cause any problems.

DELEGATE BERG: I just want to call it to your attention.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Mr. Chairman. I rise in support of Mr. Artz' minority proposal. He's stolen my thunder; there's not much left to say. I would, in addition, say that we are concerned—when we talk about priorities, we're concerned more with the security of the investment rather than the speculativeness. He made the comment that these moneys invested at five and three quarters percent will double in 12 years. I think that that's a sufficient rate of return. I also see a problem in the voting of capital stock, the voting of state moneys in capital stock—and he mentioned the situation where the firm would be spewing out pollution. The state would then be in conflict whether or not to perhaps vote for pollution controls and lose money, or vice versa—so I think we create problems. We also create the creeping problem of socialism, and I must tell everyone here I am extremely opposed to socialism. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Would Mr. Ask rise—oh, I have a comment to make about his amendment, if I may. I am in complete sympathy with Mr. Ask's—

CHAIRMAN GRAYBILL: Mr. Artz, you mean?

DELEGATE CHAMPOUX: Excuse me—in his philosophy, especially in terms of the safeguarding of the public school funds. However, there is a problem here, and I wonder if you had thought about it, Mr. Artz. For instance, the Montana University—the University of Montana has certain endowment funds like, as an example, the Dixon fund. Now most of that presently is invested in Anaconda stock. Now, if we pass this, it seems to me that what will happen, then, is that the University fund would then be forced to sell this Anaconda stock and thus convert it into these other, safely secured investments. Would you comment on that, sir, please?

DELEGATE ARTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Artz.

DELEGATE ARTZ: Mr. Chairman, as I understand that, it was discussed in committee and I believe that those are private foundations that are not subject to the control of the State of Montana. Am I not correct? You might refer that to Mr. McDonough. I'm sure that was—

CHAIRMAN GRAYBILL: Mr. McDonough isn't here so we can't refer it to him.

Yes, you have the floor, Mr. Champoux.

DELEGATE CHAMPOUX: To my knowledge, I'm not—to my knowledge, they aren't; and I wish we could clear that up.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: I believe I am correct in saying that Mr. Artz is correct that the endowment foundation of the University of Montana is not subject to this regulation now and can invest as it pleases. It's an entirely separate organization, distinct from any state agency or body.

CHAIRMAN GRAYBILL: Now, Mr. Swanberg. Do you want to make your amendment now to Mr. Artz's proposal?

DELEGATE SWANBERG: Thank you, Mr. President. I think that Mr. Artz and myself are in basic agreement. It's just a matter of language, and I would submit at this time the following sentence to be added at the end of Section 13 of the majority report. And I will read it—disregard all that other stuff up at the top—"Investment of all public funds shall be limited to public securities within the state, including school districts, county and municipal bonds, and bonds of the State of Montana; but it also may be partly invested with bonds of the United States, bonds fully guaranteed by the United States as to principal and interest, Federal Land Bank bonds, and private corporate bonds of investment quality. All investments shall be limited to safe loan investments bearing a fixed rate of interest." Now, this is the (Inaudible).

CHAIRMAN GRAYBILL: Mr. Swanberg, just a minute. Let me state your amendment. The Chair is going to allow Mr. Swanberg's substitute amendment. It's my understanding that you intend to substitute this paragraph in place of the one Mr. Artz proposed. Is that correct?

DELEGATE SWANBERG: That is correct.

CHAIRMAN GRAYBILL: All right, so that the situation is that Mr. Artz proposed this line that—this sentence that limited investments in private corporate capital stock and Mr. Swanberg has now proposed his language in place of Mr. Artz' language. Now you all have Mr. Swanberg's before you on your desks—it just doesn't say Section 13 on it. Very well, Mr. Swanberg—

DELEGATE SWANBERG: Yes.

CHAIRMAN GRAYBILL: —you've read your amendment and I'll allow it. Go ahead.

DELEGATE SWANBERG: The reason for this amendment, ladies and gentlemen, is to protect the Legislature from itself. We all know that there are times when people as a body go just a little bit crazy when it comes to speculation and investment. I wasn't too old at the time, but I do have some dim recollection of 1929 and I've read a number of books on it, and that's one good example. Just prior to that time was the Florida land boom; many fortunes were lost there. Here in Montana we are on the verge of a Montana land boom, and I don't think any of us want our investment funds put into those kind of investments. Back around 1620, if I can go back that far, the people of Holland went crazy and they began to invest in tulip bulbs, of all things, and tulip bulbs all of a sudden commanded tremendously high prices in the markets of Holland. Wealthy people took their fortunes, went out and bought these tulip bulbs and began to trade them back and forth, and common sense in Holland went out the window. And one fine day, somebody asked himself—this handful of tulip bulbs which he had purchased for a fortune—he looked at them and thought, "I wonder if they will grow." And he took them out and planted them and the whole process—he began to think about it, and apparently everybody else was thinking about it at the same time, and the result was financial disaster in Holland. A couple of hundred years later in France, we had the amazing Mississippi bubble in the life of John Law; and this gentleman had devised a financial scheme whereby land over in Louisiana, in the Louisiana area, would be used to somehow finance the monetary system of France. His plan was totally unworkable, but the people of France went for it because it just meant that they kept trading dollars up and up and up, like we are now doing with inflation, and this broke France. I'd hate to think what might have happened in the State of Montana if we had not had this provision in our Constitution back in the twenties. I would venture to state that every legislator who came over here would have just itched to get at $200 million to put in the stock market. I think the desire to do this would have been overwhelming and the arguments which we hear now would have been the same then. Prices are going up; they'll never come down. Well, let me tell you something. We haven't had any great amount of crash the last few years, but if you'll compare the price of Montana Power stock today with what it was in 1963, you'll find that it's lower today. If you compare the price of the Anaconda Company stock in 1963 with what it is today, you'll find that it's lower. And if you'll compare the price of practically any utility stock—I don't care which one it is—of 1963 with what it is today, you'll find that it's lower. Now, these are the kind of stocks that a prudent person in the stock market would invest in, managing a pension fund or some kind of a trust fund. Railroad stocks are another. Back 20 years ago, anyone would have said, "Why, railroad stock is absolutely safe. Let's buy it." Today, we know, the story is different. I think there should be something in here to protect the Legislature from itself in this way. Now the only question is how to do it. Mr. Rygg has been conferring with the Dorsey law firm on language, and I have been conferring with the bond firm of Dain, Kalman and Quail and Mr. Stan Aby on this problem. Many of you here, I think, know Stan Aby—a very colorful man in the investment world—and I think he's had a hand in practically every revenue bond problem that Montana has ever had. But anyhow, he suggested that if we wanted something in the Constitution, and he thought it was a good idea that we should take the present Constitution as is and add the following phrase, and I have it in my amendment. The phrase is: "and private corporate bonds of investment quality". Now, that phrase—"corporate bonds of investment quality"—has a strict legal meaning that's been construed many times by the courts, and that's why he suggested it. It rules out the speculative bond, and believe me, they exist. There are bonds that are floating around now that are far more speculative than many of your stocks, commanding extremely high rates of interest, but no one who is managing a fund of this manner could safely invest in them. I would submit, then, that something like this should be in this Constitution. I guess that's it. Thank you.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Again, Mr. Swanberg, I am in complete sympathy with your philosophies, sir, especially where the public school funds are concerned. However, I have a few questions for you, if I may. One of them is—may I, Mr. Chairman?

CHAIRMAN GRAYBILL: You may ask a series of questions of Mr. Swanberg.

DELEGATE CHAMPOUX: From our studies in the Education Committee, we found out that the—not all Federal Land Bank bonds are fully guaranteed by the government. Did you know that, sir?

DELEGATE SWANBERG: I'm sorry. No, I don't know.

DELEGATE CHAMPOUX: You can check this with the investment people in the—

DELEGATE SWANBERG: I just took the old Constitution, Mr. Champoux, and added that one phrase. If you think the Federal Land Bank bonds should come out, well, let's take it out.

DELEGATE CHAMPOUX: This has happened since the old Constitution. In the past they have been fully guaranteed; however, at this time they aren't. And just for the record, now, when we talk about private corporate bonds of investment quality, are we talking about triple A or above? Is that your—

DELEGATE SWANBERG: Here again, I'm not sure what the A rating is, whether it's triple A or double A, but I know that this is the language that's very frequently used in statutes setting these things up.

DELEGATE CHAMPOUX: The only thing I was concerned about, sir, was the investment quality phraseology. You're convinced that this is all right. Now, when we talk about safe loan investments, to your way of thinking, does this last section here, a fixed rate of interest, indicate what you mean then by a safe loan investment? Is that the protection there?

DELEGATE SWANBERG: Again, that's the provision of the present Constitution and I see no real reason to change it.

DELEGATE CHAMPOUX: All right, with the exception, then, of the Federal Land Bank bonds, I would support this.

CHAIRMAN GRAYBILL: All right, before we go on, the Chair would like to tell everybody that we now have Mr. Artz' amendment and Mr. Swanberg's substitute amendment. Mr. Barnard has an amendment to add to subsection 2, which deals with the public school funds only, and Mr. Davis has an amendment which could be added. But it seems to me that we will have to settle on what we're going to do with Mr. Swanberg's and/or Mr. Artz' before we can add any more unless there's a specific amendment to Mr. Swanberg's language. Very well, let's discuss it.

Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, I'd just like to ask a question for clarification. Really, frankly, I don't know a stock from a bond, because I don't own either; but several months ago I read an article in the *Wall Street Journal* about the State of Ohio, and I believe in that state they could invest in private—I don't know whether it was stocks or bonds. I wonder if perhaps someone here—Mr. Swanberg, could you clarify that situation in Ohio for me I read in *Wall Street Journal* a few months ago, or a year or so ago, about their investment program? Did they invest in stocks or bonds? I mean, I'm confused, because in the minority proposal the sentence is "private corporate capital stock", and in yours you say "private corporate bonds of investment quality" may be invested in. I just don't know the difference.

DELEGATE SWANBERG: Well, there's a gap in between. Mr. Artz' deals—forbids the investment in stock and mine is the—states that the investment will have to be bonds of corporate grade. Now, in between that you have other kinds of securities. You have debentures that are unsecured, for instance, and things of that nature. Here, under Artz' proposal, as I construe it, there could be investments in real estate; and I seriously question that. Does that answer your question?

DELEGATE REICHERT: (Inaudible)—

don't know what happened in Ohio. All I know is they had a bad program there and it was in private investment of stock, I believe.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, I'm in sympathy with these—both of these amendments if they can be worked out, and I also wish to make a few remarks about this matter. I notice in the rationale of the majority on page 30 a statement is made—"The obsolete nature of Article XXI illustrates the futility of trying to prescribe an investment program and investment details at the constitutional level." That may be true, but I have some data here that is very impressive on this matter. I think that the trust and legacy fund as used in the State of Montana in recent years has been a spectacular success. I hold in my hand data concerning the common school permanent account in the trust and legacy fund set up under the present Article XXI. Now, of course, this is not just a—this is just pertaining to the common school permanent fund and not to the other funds in the trust and legacy fund, of which there are quite a few; but the principal one is the common school fund and, in fact, it would represent, well, almost all of it. A few million dollars are in the other funds, of which there was some reference made here before. So I'm addressing myself here only to the common school permanent account. It represents not only interest on the fund but also other accretions, such as sale of public lands that the state secured from the United States, oil royalties, lease income, and other material that—all flowing into this one fund and invested. Now, of course, we're going to face this situation again in the Education Article, where a portion of the Enabling Act and the Section 21 is laid out in one of the sections in the Education Document, which we will be discussing here in a few days. And in the meantime, I want to tell you how much money has been built up by this obsolete system. The amount in the permanent common school account as of June 30th, 1954, was 27 million—wait a minute, I want to get in the right—27,177,884.43. Additions that year were 1,853,111.34. In 1955, at the end of the fiscal year, 29 million—I'm just going to read in millions—with accretions that year of 1,630,000. June 30th, 1956, 30,661,000; accretions 1,576,000. June 30th, 1957, 32 million; increase, 1,535,000. June 30th, '58, 33,772,000—and so on and so forth until we get to—and each year, fellow delegates, the amount showed an increase in every instance. On the—June 30th, 1971, the total was $54,839,504, which was invested to the credit of the common school fund of the State of Montana. That is an accretion from 1954 to 1971, 17 years of that, from 27 million to 54 million; which is—and a little bit more—which is a little bit better than a hundred percent in 17 years. Now, I don't think that's a bad job at all; I think it's a good job. I grant that if they had had that much money in 1933 and invested it in Anaconda stock when it was worth $3 and would cash it in today, they would have probably done a great deal better. If they had had it in Montana life insurance in 1910, their hundred dollars would have been worth more than $5,000 now, and you could blow that up along the same line. Now, that is the story of this fund and it—I submit that instead of being a poor job, it has been a splendid job; and if we can do as well in the future and if we turn it over to the Legislature and they do as well or better, why, Montana will be in a fine situation. However, I want to be sure that we don't lose anything. I'm not so concerned about gaining as I am keeping what we have and gradually going up. I trust I'm a prudent man, as far as finances are concerned, and that's probably why my finances are in the state they are. (Laughter) However, there are other things to consider in this matter, and that is, it isn't just the interest we are going to gain by investing this money in, whether in government bonds or stocks or whatever it might be. I am told that recently one of the divisions of the state government invested several million dollars in United States Shipping Board stock—bonds—and they are going to get over 8 percent interest in it and it's guaranteed. Well, if you can get—if you can invest this money that is in these funds and in the other funds, as well as the common school fund—if you can invest that money in federal guaranteed bonds, such as the United States Shipping Board bonds, at better than 8 percent interest, you can't do much better than that. But there is one way that we are also raising money for this fund, and that is through the coal mining down in eastern Montana which Mrs. Cross is so interested in. In the Decker area, the state school—the State of Montana has a number of school sections, and upon one of them the Decker Mining Company is now engaged in mining coal. This single section of coal land is estimated, under the contracts which the state has entered into with the company, to produce 55 million tons of coal in the next 9 years, for which the State of Montana gets a royalty of 17½ cents a ton. That means that we're going to gain in excess—or at least a million dollars a year and probably 9 million dollars in the anticipated 8 years which this will be carried out. That means that 10 years from now, not taking into account the gradual growth, we're going to have around 8 or 9 million dollars more in this common school fund. Somebody said in my hearing that these 100 million and 500 million dollar amounts that were laid out in the Section 21, the Trust and Legacy fund, were jokes. They didn't amount to anything. Nothing could be farther from the truth with respect to common school fund, which was one of—which is the $500—is the 500 million dollar fund. The time is going to come very shortly, probably even in my lifetime, when this fund is going to reach a hundred million dollars; and this republic is not too old. The—we're just now celebrating the 100th anniversary of Yellowstone Park. It's plain that in the—at the rate of growth of money, which due to inflation makes it less valuable, we're going to have the day when we will have—if we keep this, we will have $500 million in this fund, and if we even have a hundred million dollars in this fund and it's drawing even 4 or 5 percent interest, it's going to be a very healthy thing for the State of Montana. And that is why we must scrupulously guard this inheritance which is growing and growing and growing. I support the minority.

CHAIRMAN GRAYBILL: Very well, members of the body, we have before us Section 13 on investment in public funds, as proposed by the majority; and we have, to that Mr. Artz' amendment, to add a sentence that limits investment in public corporate capital stock; and we have a substitute motion—a substitute amendment by Mr. Swanberg to allow investment in bonds and certain other bonds which are fully guaranteed. So we're now debating Mr. Swanberg's substitute amendment. Is there further discussion?

Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, I rise in opposition to the substitute amendment and in support of the majority proposal. I will confine my remarks principally to the effects of this upon the funds invested by the State of Montana for the benefit of public employees—that is, retirement funds. I am not familiar with the problems of the investment of the public school funds, and they may have problems which would dictate somewhat of a different approach. I am appalled by the lack of confidence expressed on this floor, not only in the Legislature of Montana—I'm not so terribly appalled by that, since I have expressed some lack of confidence in it myself from time to time—but also by the lack of confidence expressed by the members of this conservative body in the economy of this country, which is essentially what you are saying. Mr. Swanberg speaks of the debacle of the—at the end of the 1920's. I see a headline in the *Billings Gazette* this morning that says we are writing a constitution for the 1920's. Maybe that's exactly what we do have in mind. As an economist, I give you no guarantees, but I think it's highly unlikely that we are going to have to worry about the great crash again. The economy of the United States has changed a great deal in the last 40 years, and we will have our ups and downs in the stock market. But the tulip bubble and the great crash of 1929, I think, are not something we need to worry about in writing a Constitution for the future, at least the foreseeable future. Now, the minority spokesman, Delegate Artz, speaks of his priorities and he puts security at the head of his priorities. I ask you, just how secure is an investment in a fixed dollar security which is depreciating real value at the rate of 5 or 6 percent a year, which it has been doing regularly for the last several years? Mr. Romney speaks with glowing pride of the growth in whatever fund it was you were talking about of a hundred percent in 17 years. In those same 17 years, price level has raised sufficiently that the real value of that fund that he speaks of has remained just about constant. Now, it is a fact, I think—although I haven't checked this—that practically every retirement fund—private retirement fund does permit and does, in fact, invest part of its money, at least, in corporate stocks. And the restriction that has been imposed upon the investment of retirement funds for the benefit of the employees of the State of Montana in the past has, in effect, robbed them of a considerable part of their potential retirement return. I am a member of a private retirement fund, to which I contribute in addition to my contributions to the State of Montana's retirement fund, in which it is possible to vary the amount, the percentage of my contribution as between fixed return—that is, bonds and securities—and stocks—on what is called a variable annuity basis, from zero to a hundred percent in either direction. And I've examined very carefully the results of this fund since it was established in the early 1950's; and with the exception of the last three years or so, one would do considerably better in such a stock fund than in a purely bond fund of the sort which is contemplated here. I would say to you that we are not talking about the Legislative Assembly—or the Legislature, as the Style and Drafting Committee prefers to call it—investing the public funds of Montana. We are talking about them, as the language of the majority says, "providing for a unified investment program", and I think they should be allowed to provide for that. We are not—we do not have the picture before us of the Legislature sitting down and actually doing this investment itself. It will turn the job over to experts. And it seems to me that this is the way it should be handled and that we should not try to freeze this into the Constitution. Thank you.

CHAIRMAN GRAYBILL: Is there further discussion on Mr. Swanberg's amendment? Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, I would like to ask some questions of Mr. Swanberg.

CHAIRMAN GRAYBILL: Mr. Swanberg, will you yield?

DELEGATE SWANBERG: Yes.

DELEGATE HABEDANK: Mr. Swanberg, is there a difference between the fund that would be covered by Section 13 and the investment of school trust funds, or does Section 13 cover all of them?

DELEGATE SWANBERG: The language says "investment of all public funds". Now, perhaps the Finance Committee members can enlighten us further on that, but as I construe that it would be total.

DELEGATE HABEDANK: Mr. Chairman, may I ask a series of questions?

CHAIRMAN GRAYBILL: Yes.

DELEGATE HABEDANK: Mr. Swanberg, is it not correct that, in most of these school trust funds, at least, approximately 95 percent of the income is paid out each year and only 5 percent goes back into the principal fund?

DELEGATE SWANBERG: I'm not familiar with that, Mr. Habedank.

DELEGATE HABEDANK: May I ask Mr. McDonough that question?

CHAIRMAN GRAYBILL: Mr. McDonough, would you like to yield?

DELEGATE McDONOUGH: Repeat your question, would you please?

DELEGATE HABEDANK: Is it not true that in connection with school trust funds, 95 percent is paid out for the schools each year and only 5 percent goes back into the principal trust—or approximately that?

DELEGATE McDONOUGH: That's essentially correct, yes.

DELEGATE HABEDANK: Then was it your thought that if you were limited—Mr. McDonough, please—was it the thought of your committee that if you were limited to investing only in fixed income items, such as bonds, and you paid out 95 percent each year, your principal would, in fact, decrease to a fraction of what it was as outlined by Dr. Heliker?

DELEGATE McDONOUGH: Well, it certainly would—I mean, if you start out with $40 million and 20 years later the dollar went down to 50 cents in value, you'd only have $20 million afterwards.

DELEGATE HABEDANK: If you had paid out all your interest each year except the 5 percent?

DELEGATE McDONOUGH: That's correct.

DELEGATE HABEDANK: Thank you.

DELEGATE McDONOUGH: One other point I would like to make is that the permanent school fund under Article XI, the wording of that is "insured by the State of Montana against any loss", which means that if they lose any money in the permanent school fund, the Legislature has to raise taxes to replace that money.

DELEGATE HABEDANK: Thank you.

CHAIRMAN GRAYBILL: Mrs Speer.

DELEGATE SPEER: I wish to speak in opposition to the Swanberg amendment, because I feel that it freezes into the Constitution some of the most severe restrictions that are—that exist there. For instance, the phrase "limited to public investments within the state". That certainly represents the perspective of 1889, and I'm sure—I know that we have broadened our outlook since that date. The only other point that I wanted to raise is that this provision which we now have in the Constitution, and it's found in Mr. Swanberg's amendment, does not say anything about the unified trust funds, the unified system. I think the Supreme Court has upheld the Department of

Investments which puts the investments under a specialized agency, but I know that there are many departments that are still resisting that, and I think it should be in the Constitution that we are to have a unified investment system.

CHAIRMAN GRAYBILL: Mr. Swanberg—Mr. Barnard, do you want to make amendments now, or are you going to wait till he's finished?

DELEGATE BARNARD: (Inaudible)

CHAIRMAN GRAYBILL: All right, you want to speak on Mr. Swanberg's amendment. Go ahead.

DELEGATE BARNARD: I rise in opposition to Mr. Swanberg's proposed amendment. The principal thing in Mr. Swanberg's amendment proposes that we can—the state can invest in corporate bonds, and the consensus of the minority of the Education Committee is they didn't want this done; and for that reason, I oppose Mr. Swanberg's amendment.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Would the Chair permit me to discuss what the amendment of Mr. Barnard's is in relation to these other amendments, because it is actually a little stricter? His proposed amendment—

CHAIRMAN GRAYBILL: The Chair will permit you to explain what another amendment may be that might come up later, yes.

DELEGATE DAVIS: Mr. Barnard has an amendment which would restrict you to—public schools funds to be more conservatively invested in bonds of the United States or other securities fully guaranteed as to principal and interest by the United States; so it seems like we have three options and this group will have to make a decision. The first option is whether you want the restrictions just as provided by the Legislature. The second option, which—as proposed here, is whether the investment of all public funds can be made in securities of the State of Montana or in bonds guaranteed by the United States as to principal and interest, Federal Land Bank bonds and corporate bonds of investment quality. And then, the third option will be as to whether you want to make a further limitation on just the public school funds and guarantee them against loss or diversion. The majority report is similar to the majority report we came up with in Education and Public Lands, and the recommendation of the Legislative Council and the Commission on Constitutional Revision was to leave this entirely to the Legislature and open it completely up. We have that, I think, in our majority—or language to that effect, "as provided by law". Subsequent to getting this out, I think we've all taken a second look at the school funds, at least as far as they're concerned as to whether we want to have any nature of speculation at all on those. We are one of the few states that has this $52 million left. I daresay if we were—had, over the last 60 years, 70 years—if we'd had the option, if it hadn't been locked in the Constitution, of speculating with this, we might have had a lot more money but we might not have had none. Most of the states now don't have any; so I think it's—the general consensus of the members of our Committee on Education was that we felt we might be getting a little too loose with it, that we should—the school money itself—lock it back into the Constitution. It's not always—to change things doesn't necessarily always mean we're going to improve on them. In this particular instance, as with our public lands, I think our forebears did an excellent job. We've still got the money. And the question then would be whether you want to liberalize the investment potential to take care of inflation, also to take care of the chances on what may happen in the financial world; whether you want to just leave it up to the Legislature to go along; or whether you want to make it more restrictive. Now, frankly, Mr. Artz' amendment and Mr. Swanberg's amendment is more or less of a compromise between the original position of the Public Education Committee on this particular article and on our second thought about putting it back in the old constitutional language, because it does include private corporate bonds of investment quality. Under the school section, the public school fund, it provides, shall remain forever inviolate, guaranteed by the state against loss or diversion. So that means the state has to guarantee this fund, this $52 million fund or whatever it is, plus additions thereto, which is 5 percent of the income. But for depletions, such as coal, that goes into the capital. That's not income, I think; the royalty is probably income. When you deplete it, that goes in your capital account, the same as if you sell lands. And the same way with gas; and probably the coal would be the same. I, frankly, feel that I would prefer supporting the compromise that has now been submitted by Mr. Swanberg in liberalizing this account to the extent that you can invest in investment-quality corporate bonds, partially, and in other securities guaranteed by the United States or the state as to principal interest. And I think this would probably be a wise investment of these funds, and I will support the two amendments and will amend it further if we get past that.

CHAIRMAN GRAYBILL: Now, members of the body, before we go on, the Chair would like to—I think Mr. Davis has correctly summarized, but in case you didn't write them down, it seems we now have four positions, at least, visible: the position of the committee majority to have the restrictions provided by the Legislature, if any; the second position of Mr. Artz to restrict investments in public—or in private corporate stock; the third position by Mr. Swanberg to restrict investments to public securities within the state and U.S. bonds and certain investment-quality corporate bonds; and a fourth position, which Mr. Barnard will make if we clear the decks here, to restrict public school fund investments. Those are the four possibilities that you're discussing.

Mr. Champoux.

DELEGATE CHAMPOUX: I don't want to interject a fifth, but I may here. I think I see a possible way out of it. Mr. Heliker's comment hasn't been compromised, I don't think—or, I mean, included in it. Do you feel that? Let me—may I offer this? If we were to accept the majority proposal and then Mr. Barnard also has a slip up there, I believe, to the effect that it says: "The Legislative Assembly shall provide for a unified investment program for public funds not otherwise constitutionally restricted". Then if we accept that with the majority proposal, then we add Mr. Barnard's amendment, which would be subsection 2, to this article, I think that would pretty well take care of it. At least, I throw this out as a possibility.

CHAIRMAN GRAYBILL: Is there other discussion?

Mr. Berthelson.

DELEGATE BERTHELSON: Mr. Chairman, fellow delegates. Please, please think about what—the many, many, many long hours the committee spent listening to this type of debate. I rise, Mr. Chairman, to resist the motion of Mr. Swanberg. Mr. Swanberg, Federal Land Banks are not guaranteed by the federal government any more. I'd like to ask one question and have you consider this carefully. At the time this language was adopted in the present Constitution, did those writers dream that today we might have a Farmers Home Administration which the federal government guarantees with its full faith and credit as to principal and interest? And that many, many millions of dollars worth of Farmers Home Administration bonds are sold and owned by Montanans and that money is going back into Montana agriculture today to help our state? And that at one time those Farmers Home Administration bonds earned as much as eight and a quarter percent and today they are one of the best-yielding investments? I ask you to carefully consider that when the original language, as Mr. Swanberg would have it put back into the Constitution—did those framers of the Constitution envision that the Maritime Commission bonds that we're talking about today would be fully guaranteed as to principal and interest by the United States government? I could go on and on and talk about these things again, referring to the many, many hours of debate and witnesses that this committee listened to night after night and long day after day. I resist the minority motion. I would ask each of you in this body to turn to the Education Committee's report and read what it says in the Education Committee in their majority article on page 15; then read what they say in their minority article on page 40. Mr. Davis referred to it, that in that committee report these public school funds that everyone seems to be concerned about are guaranteed to be held inviolate and forever protected by Montana. Now, I think when you consider that and consider the work of this majority committee, it should allay everyone's fears. I resist the amendments; I resist any motions to amend the amendments. And I ask you to please consider the majority report and as it cuts across the Education report. Now, someone didn't do their homework very good when they said that Montana was the only state that had anything left in their public school fund. This committee, I believe, did its homework with the amount of time that it had allotted to it. We have a near sister state that has in its permanent school fund not $52 million that we're so proud of, but that sister state has in its permanent school fund $252 million. I think that there's one comment here that is—should have some influence on our thinking. This sister state—or near sister state is rated nationally as having one of the very finest investment programs. This state does, too—the state guarantees to hold inviolate these public school funds. But up until the time in 1962 when this state allowed their public school funds to become part of a unified investment program, the average yield on their public school fund investment, up to that date, was 2.68 percent yield. Since 1962 that yield has been increased until, during the year 1970, which is the last report that we had to compare with—during 1970 the yield on that particular state's permanent school fund was—during the year was 6.02. Mr. President and delegates, I rise in behalf of the Revenue and Finance Committee to resist the amendments, and ask that this body support the majority report and the work of the Education Committee. Thank you.

CHAIRMAN GRAYBILL: Mr. Drum.

DELEGATE DRUM: Mr. Chairman. I, too, would like to rise in support of the committee report. And I'd like to pass on to you a comment that was just made by my seatmate, that getting to know Old Earl was worth the whole trip over here. And I'm glad that Earl was able to express himself, because he's certainly shortened my comments considerably. I would like, if I may, in support of the committee report, to bring a little more input into this conversation that has not come up yet. I'd like to review a little bit what has happened in our investment program here in the state. At one time, we were informed through testimony, the investment of Montana's funds was in the hands of several departments. Supposedly the responsibility and authority was in the hands of the head of the State Land Department; but over years of practices that were just a little bit happenstance in the investment of these moneys—notes would be sent over saying we invested in certain funds—and as a result of these practices, there was considerable doubt as to how much, how many, where and why-for the investments were made. Now, as a result of the legislative reorganization, we are on a road that appeared to our committee to be a pretty healthy road to travel from the investment standpoint. The investments have been computerized. They are pretty close, they tell me now, to knowing about where Montana's money is, about what the returns are on these moneys, and about what the value and worth of the investments are. Now, with this as a background, the fact that we have moved so far in the past few years in this investment program, one of the considerations of our committee was that perhaps we may go another step further, or maybe two steps further. Perhaps at some point in the future the state funds or the state investment people may use the services of very qualified firms—organizations that are in existence here in the United States—to actually do the investing of certain types of our funds. Now, it happened that some weeks ago I happened to encounter some people who are with one of these funds. I didn't turn them on the State of Montana, but I asked them quite a few questions. It happens that they invest the funds—or they are retained by four different states. They happen to be located in Baltimore, Maryland. They invest $4 billion. And after talking to them, I came away with the feeling that for us to put limitations in the Constitution on the handling of the people's money for perhaps another hundred years, we just were not—we're just about half crazy. I said to myself, "If I had X number of dollars, would I give that to someone to manage and say, 'This is the only way you can investment [invest it]'?"—to not consider the inflation thing that Dr. Heliker has mentioned, to not mention the—not to consider the many new types of investments which may become very attractive and very safe for the state in future years. I would like to say that our committee, the Mitchell Gang, really doesn't want to invest all of the state moneys in common stocks. I would like to rise in the defense of some common stocks. My friend, Mr. Artz, you heard speak against the big red apple. I would say, "They're not too bad sometimes, if you happen to get to them." They're all right; but sometimes you do fall off the limb in going after them. But the fact that we are not going to put $300 million or $350 million on one box of red apples. What people who manage money do is, they spread it out. They eliminate the risk. They lower the risk. They minimize the risk and they maximize the opportunity for gain. Now, for the people in the Public Employees' Retirement Fund or the Teachers' Retirement Fund, for them to be limited in the method of investment of their funds—actually it is their money that is being put in; the state matches with a certain amount. These people should be given the opportunity to select how they wish their money to be invested. This is true in most all pension plans today. When a person signs up for a pension plan, in many areas—most, in fact—most teachers' retirement funds throughout the country, they're given an opportunity to say, "I'd like 20 percent of my money to go into common stocks, 20 percent into government bonds, and 50 percent in something else." This is a growing thing; and for us here in the Constitution to limit the ability of the people that invest these people's money, it just is not very practical, really. So I would say that if we could leave in the hands of good legislators of the future; because those of you who have served in the Legislature know that the real dependable old horses wind up on the finance—in the finance area. They're the people who have come over for years; and they're good, solid people. I'm talking about Norris Nichols' kind of guys, the Francis Bardanouve kind of guys. They're not the kind of people that are going to go out and dump $300 million of Montana's money down the tube someplace. They're just not going to do it, and we are not going to give them the authority to make that decision. It's going to be the authority of the vote of the Legislature and the use of their wisdom and judgment. Now, as far as the doomsday deals that you've heard Mr. Swanberg and Mr. Artz talk about, you can point—history is replete with people who have lost money in investments. Mr. Artz described an investment he made in some common stock that went from 70 to 6. Well, I can tell you of some people I know that got in some things at 8 cents and it's up to $29.50 today. So everything is not bad. There are things that are—that go up. The thing that I'm saying, that people who know how to invest money and whose business it is to invest money are able to evaluate and may be able to make a real contribution to a greater income for the people at some point down the road. Now, the return from the school trust fund, if the proper investment is made—or even more profitable investment is made, returns to us as tax relief. Any way we can—any greater amount of money we can bring in than we are bringing in is money that will appear somewhere in our appropriations as tax relief to the taxpayer. And I think that's something that we should all consider. The faith that Dr. Heliker mentioned in the private enterprise system, I think, is the thread that ran through our committee after we heard—as Mr. Berthelson said, we heard the same comments, the same arguments, the same proposals, really, in our committee. And we spent many enjoyable hours, really, there listening to them. But I think it really all boils down to this: the American system of private enterprise ain't too bad. It's a growing economy. There may be losers, and there are a lot of winners. But if we have faith in that economy and are willing to allow our people to make the decision of whether they want to participate in the growth of the American economy, I think this Constitution should allow them that latitude. I support the majority report. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I just want this assembly to know why the nonaffluent businessman of this team has not been speaking on this subject. I recognize when I have talent, and I yield to the affluent man and the banker when it comes to talking about investments. We listened for hours to the Investment Board; we feel they're in very good hands. And I think the last two speakers have very ably stated the case of the majority report over the minority report. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Swanberg, do you want to close?

Mr. Barnard, do you want to speak before he closes? You were at this point about a half an hour ago.

DELEGATE BARNARD: Mr. President, yes, I would like to speak just a second.

CHAIRMAN GRAYBILL: All right.

DELEGATE BARNARD: I'd just like to point out there is no intention on the part of the Education Committee, either the minority or the majority reports, to remove these funds from the unified investment program. We just want to put a little additional limitation on how they may be invested. We're in full agreement with the unified investment program.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: I know I've spoken too much today, but I rise in support of the majority report. It seems to me that this has been a splendid committee and that in line with my philosophy to let the future to the generations yet unborn, I am willing to trust the people of Montana who they'll elect to the Legislature. If they elect people to the Legislature that are crooks, we can turn back the course of history and we can resurrect the vigilante committees and hang some people from the Capitol dome. (Laughter) But I'm not afraid of the future or afraid of the people of Montana, and I submit the progressive majority report and I'm all for them.

CHAIRMAN GRAYBILL: Mr. Swanberg, you may close.

DELEGATE SWANBERG: Thank you, Mr. President. Just a few short comments. I, too, think that the Finance Committee has come in with a splendid report, and I do not like to do anything here which mars an almost-perfect record. Nevertheless, I do feel that the motion submitted has merit. Briefly now, this question of bonds and inflation. They say that if you invest in stocks, you ward off the possibilities of losing your money through inflation. Well, let me tell you something. You can ward off inflation through bonds also. Now consider this. Right now—and if you'll look at the newspaper, all—you can prove it for yourself—you can buy a bond of American Telephone and Telegraph Company that pays 4 percent for $75 on the hundred. That bond is due in roughly 20 years. If you pay $75 for that bond, it's supposed to—it has a coupon of $4, you are in effect getting an investment of 5 percent; so that all during that 20 years you're getting 5 percent on your money. And then at the end of the 20 years, you get back not $75 that you paid for it, but you get back a hundred. So that all during this period you've been receiving a very nice 5 percent return, very safe, and at the end of the period you get back the—a hundred dollars. Now, if that isn't some protection against inflation, I don't know what it is. They say if you invest in common stocks you'll ward off inflation. Well, which stocks? That's the question. Ten years ago, we would have been having this discussion, they would have said, "Buy utility stocks; buy insurance stocks"; and most of your investment managers would have bought those stocks, only to find that today they are lower than they were 10 years ago. Does that guard against inflation? I don't think that it does. What it boils down to here is a question of safety of your capital, safety of your principal, as against the hope of some small gain in the stock market, and this is the very thing we want to guard against. We want to guard against this hope of some gain in the stock market, having a Legislature in some period of financial frenzy—they say it won't happen again; I say it will happen again—coming in here and opening up the doors to wild investments, and our whole investment program goes down the tube, or a substantial part of it. Now, these small losses that you would incur by this conduct would more than offset the gain that you might not have made by keeping your money in safe investments. There's one final comment. I would like to delete from my motion those Federal Land Bank bonds which are not guaranteed by the government. I guess they ought to come out of there. (Laughter)

CHAIRMAN GRAYBILL: First of all, then, is there any objection to deleting the Federal Land Bank bonds?
(No response)

CHAIRMAN GRAYBILL: All in favor of deleting them, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: All right, they're out. Now the issue is on Mr. Swanberg's amendment. The effect is that Section 13 of the committee report would be amended by adding the language of Mr. Swanberg's amendment—probably on line 1, after the word "maintained"—but in any event, to add this paragraph to the minority report. The paragraph allows investment of public funds in public securities within the state and in bonds of the United States, fully guaranteed, and in certain private corporate bonds of investment quality. Do you want a roll call?

DELEGATES: Yes.

CHAIRMAN GRAYBILL: Very well, we'll have a roll call. All in favor of Mr. Swanberg's amendment vote Aye; all opposed, vote No. Have all the delegates voted?
(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?
(No response)

CHAIRMAN GRAYBILL: Very well, the ballot's closed. Please take the vote.

Aasheim	Nay
Anderson, J.	Aye
Anderson, O.	Nay
Arbanas	Excused
Arness	Nay
Aronow	Aye
Artz	Aye
Ask	Aye
Babcock	Absent
Barnard	Nay
Bates	Nay
Belcher	Excused
Berg	Aye
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Nay
Brazier	Nay
Brown	Nay
Bugbee	Nay
Burkhardt	Nay
Cain	Nay

Campbell	Nay
Cate	Absent
Champoux	Nay
Choate	Nay
Conover	Nay
Cross	Nay
Dahood	Nay
Davis	Aye
Delaney	Aye
Driscoll	Nay
Drum	Nay
Eck	Nay
Erdmann	Nay
Eskildsen	Excused
Etchart	Nay
Felt	Excused
Foster	Nay
Furlong	Nay
Garlington	Nay
Gysler	Aye
Habedank	Nay
Hanson, R.S.	Nay
Hanson, R.	Aye
Harbaugh	Absent
Harlow	Nay
Harper	Nay
Harrington	Absent
Heliker	Nay
Holland	Excused
Jacobsen	Nay
James	Nay
Johnson	Nay
Joyce	Nay
Kamhoot	Absent
Kelleher	Nay
Leuthold	Nay
Loendorf	Nay
Lorello	Absent
Mahoney	Aye
Mansfield	Aye
Martin	Nay
McCarvel	Aye
McDonough	Nay
McKeon	Aye
McNeil	Nay
Melvin	Nay
Monroe	Absent
Murray	Nay
Noble	Nay
Nutting	Nay
Payne	Nay
Pemberton	Absent
Rebal	Nay
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	Aye
Rygg	Nay
Scanlin	Nay
Schiltz	Nay
Siderius	Nay
Simon	Nay
Skari	Nay
Sparks	Absent
Speer	Nay
Studer	Aye
Sullivan	Aye
Swanberg	Aye
Toole	Aye
Van Buskirk	Aye
Vermillion	Aye
Wagner	Nay
Ward	Nay
Warden	Nay
Wilson	Aye
Woodmansey	Nay
Mr. Chairman	Nay

CLERK SMITH: Mr. Chairman, 21 voting Aye, 65 voting No.

CHAIRMAN GRAYBILL: 65 having voted No, 21 having voted Aye, the motion fails. We are now debating Mr. Artz' motion to amend the majority report by adding the language: "With the exception of moneys contributed by individuals to retirement funds, no public funds shall be invested in private corporate capital stock."

Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman, I rise in support of the Artz amendment. First, I want to make a comment that has not been contested—that our public school funds are held inviolate. That's a high-sounding phrase, that they are held inviolate. But suppose that any of these funds are invested in common stocks; and we know the probability and the possibility that those stocks could become one-third their value, one-fourth their value. Mr. Berthelson said they are held—this money is inviolate. Inviolate by whom? Who is going to replace that money if it's lost? The Legislature, isn't it? And who is going to force that Legislature to make that money good? Can you do it? There's nothing under heaven and above earth that can make them do it unless they want to, and if they need $40 million to replace this inviolate fund, they're not going to find it. So let's not be too sure about this inviolate proposition. Sure, back 10 years ago, I too said these common stocks are good investments, but today I have surely changed my mind. I have changed my mind; and as Mr. Swanberg said, these bonds are pretty secure and they are rising in value as the years go by. You buy them below par and they mature at a hundred percent; and that is capital gains, and we have—they're a security that we do not have in common stocks. And by the way, when teachers and policemen and members of the employment group—here on the Capitol building, anywhere—when they put their dollars into a retirement system, they want dollars back. They want dollars back because that's what they live on, not some potential. Now, I heard some time ago that we should use this money and swing with it. Well, yes, that sounds good, but I feel that we might be waltzing with Matilda over to Sydney, Australia. And just suppose—now, just imagine, we have an investment counselor down here, and he's a good one as far as I know. I've talked with him, because I'm concerned about this money. Is there anything to prevent him from setting up a corporation over in Australia or over in Scotland or someplace and invest this money—not a million dollars, couple million dollars? Nothing to stop him. He says there is, but the Investment Board meets once every month. Oh, yes, we know that we have auditors. You bankers have had auditors, and you bankers have also read in the newspapers where these auditors made a mistake and we find people who've gone off with a million dollars, even with good auditing. Now you know that's a fact. Now, we want security for these moneys, because a Legislature is not bound to replace it. And I've got a list here I can show you where the State of Washington borrowed from the teachers' retirement some $75 million and they haven't replaced it. So you think very seriously about this amendment of Mr. Artz'; and I like it because he doesn't preclude investing in other moneys. This man down here the other day when I was sitting there invested $2 million of money floating around in banks. He just invested and overnight he had made a pretty good chunk of money, and I don't object to that. But to invest these school moneys, this that we have set aside as a trust—it isn't a trust if we put it in some stocks. And I ask you to look again at Mr. Artz' amendment.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: I would like to just add a brief footnote to what Mr. Aasheim has just said, and I agree with him in terms of the comments he made about the guarantee against loss and diversion. But, Mags, if the Legislature did decide to replace it, where would that money come from? Would it not come from us, the people?

CHAIRMAN GRAYBILL: I think that's a rhetorical question.

Mrs. Cross.

DELEGATE CROSS: I miss—(Inaudible)

DELEGATE CHAMPOUX: (Inaudible)

CHAIRMAN GRAYBILL: All right, you want him to yield. Then you have to ask that. I can't—

DELEGATE CHAMPOUX: Mr. Aasheim, if the Legislature decided to make up the loss, who would pay for it, sir, please?

DELEGATE AASHEIM: If they decided to do that, the taxpayers would; but there's nothing to force them to do so, and you—if you have money in the Teachers' Retirement System, you are the loser.

Mrs. Cain.

DELEGATE CAIN: Yes, Mr. President. I'd like to ask Mr. Artz a question.

CHAIRMAN GRAYBILL: Mr. Artz, do you want to yield?

DELEGATE ARTZ: Yes.

DELEGATE CAIN: Mr. Artz, in states and systems where they have this kind of investment for retirement moneys, are the individual retirees or people who belong to this association—are they allowed to make a decision as to what their money is used for?

DELEGATE ARTZ: I think, Mr. Chairman, as I recall from the testimony, there are certain states that have it set up, that are highly computerized, where the individuals can make that choice; and my plan does provide that the individuals can make that choice for the money they put in.

DELEGATE CAIN: I see. Well, in that case I would support your amendment.

CHAIRMAN GRAYBILL: Mr. Habedank, did you wish to speak?

DELEGATE HABEDANK: Mr. Chairman, I would like to ask Mr. Aasheim if he'd yield to a question.

CHAIRMAN GRAYBILL: Mr. Aasheim?

DELEGATE AASHEIM: I've been waiting, because I saw the glint in your eye.

DELEGATE HABEDANK: Mr. Aasheim, I'm not completely sure about my Montana history, and I'm sure you are, but in the 1920's didn't the Legislature cause a great deal of loss to the school funds through loans to farmers and bad loans, and the Supreme Court forced them to replace it?

DELEGATE AASHEIM: I really don't know, Mr. Habedank. I can't answer that. My memory fails me in that respect.

DELEGATE HABEDANK: Mr. Chairman, may I ask another question?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE AASHEIM: I yield.

DELEGATE HABEDANK: If the Supreme Court did force the Legislature to replace it, would your statement still be the same, that no one can force the Legislature to replace that money?

DELEGATE AASHEIM: I don't know for sure, Mr. Habedank. You can lead a horse to water, but you sure can't make him drink.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: I rise in support of the majority report. I think Delegate Aasheim's comments might be well taken. Seems to me, however, he's talking about human frailty; and I don't care what system you have, that's possible.

CHAIRMAN GRAYBILL: Mr. Roeder.

DELEGATE ROEDER: Mr. Chairman, I'd like to respond to Mr. Habedank's questions. The answer is yes. When the homestead boom collapsed, we had put a lot of common school capital into that bubble; and when it burst, we adopted a program of recouping the fund; and I think the last payment made back into the fund was made in 1957.

CHAIRMAN GRAYBILL: Mr. Davis, I just want to caution the body again we're debating Mr. Artz' amendment to add this limitation on investment in common stock.

Mr. Davis.

DELEGATE DAVIS: I'll wait on mine.

CHAIRMAN GRAYBILL: Okay.

Mr. Mahoney.

DELEGATE MAHONEY: Mr. President, this was caused by the Supreme Court in the Constitution taking protection. This is why the Supreme Court—why they had to pay it back. The Supreme Court said, "You're in violation." Now, if we get this, they won't have to. It wouldn't be under this system. The Supreme Court is not—would not—could not say it, because there's no question here that we have to hold it. This is what the thing is. Now, if you adopt this majority report as is, then the Supreme Court can't tell them to do it; it'll be up to the Legislature, if they will and wish to do it. I hope they do. Now, I think we have to realize that these funds are—most of this is school fund, and this is the one that's worrying me. I don't worry so much about the others. They're created—a fund has been created by Teachers' Retirement, PERS, and that; and if they lose, it's there—but not the school kids. These school children—this land was given to the school children in the State of Montana, and this is what—now, Montana has not seen. In answer to Mr. Berthelson, and I don't know what state he was talking to, had we sold a lot of this land, we would have had a lot more money in the fund; but thank goodness, the State of Montana for—quite a few years ago, they started to decide to slow up on sales of land; this was one hedge against inflation. You got the acres of the land out here and it's still worth and it's still bringing in. If you sold it and went out here, especially if you sold it back at the time it was selling for 50, 75, or a dollar an acre, we didn't get much. Now this same land is worth an awful lot. I'm sure glad that we didn't sell that school section that we're going to get the great amount of money on. And, thank goodness, we had farsighted people that wasn't looking for the dollar and getting that; that they says, "We'll just hang on." Now, all that I think in this is that we should be farsighted and, say, put this little provision in to slow down future Legislatures. I trust them, but I've got to go back—and I see Arlyne Reichert looking at me—I trust them, Arlyne, but I go back to this story of Amos and Andy. And probably none of you remember Amos and Andy, but they're talking about Amos one night and he says to Andy—or Amos is asked; he says, "Don't you trust him, the Kingfish?" "Well," he says, "I trust him, but I sure watch him." And this is what I think here, that this little provision of this permanent school fund—now, this is the baby that worries me. It's been given to us. The federal government in the Enabling Act gave us—and you remember when they started, where we got the 5 percent deal; when we got into this court, Arnold Olsen took one side; the Governor took another. This went to the federal court, and we finally determined that this then, a certain part of it, had to go to the public school fund. Now, all I want to do is be sure it's inviolate. And I know it's nice to go out and say, "Oh, boy"—but I'd hate to have this man or the Governor or the State Superintendent of Public Instruction have to put a ticker tape in down in her office to see how the stock market did that day. This would worry me, and I have watched right now—the stock market has done beautiful here lately. It's going up; but, boy, when it goes down. Now this is all I'm trying to do—is to just keep for the school kids, future generations, protection. And as far as these here things of these bonds, I don't want anything in there that isn't guaranteed by the federal government, because we cannot print money; Montana can't. So we will follow the fluctuation of the United States up and down. That's why I particularly want this protected.

CHAIRMAN GRAYBILL: Mr. Artz, I wanted to call on you, but Mr. Vermillion beat you up.

Mr. Vermillion.

DELEGATE VERMILLION: Thank you, Mr. President. I'll take just a half minute here. I was wondering—remind everybody here, a couple of weeks ago in the Executive—or rather the Legislative Article, we passed a Section 6 of—Section 11, subsection 6, which says: "No appropriations shall be made for any private corporation not under control of the state." And I'm wondering if the State of Montana began investing in private companies, it might be considered they were controlling those companies and therefore they would be free later on to make appropriations for those companies.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: I'd like to clear up one point that Mr. Mahoney was talking about. Let's get off that school fund kick. That's in Mr.—

CHAIRMAN GRAYBILL: Champoux.

DELEGATE McDONOUGH: Champoux—I was going to call him Shampoo—Champoux's article, and there's only $53 million in that school fund and it's going to be well covered by Mr. Champoux's article. We're talking about the balance of this fund, which is probably $250 million, that has nothing to do with school funds. And that's what we're talking about in this section—is investment of those funds, the greater majority of which are the pension fund to the Teachers' Retirement System and the Public Employees' Retirement System; and both of those organizations are represented on the Investment Board and agree with the majority report.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: I'm going to be very brief. If you look at both the majority and the minority—and I'm directing this to you, Mr. McDonough—it talks about public funds. Now, whichever one of these moves—or goes through, we're going to move for an amendment—that is to say, Mr. Barnard's amendment—to protect the public school funds. So if you're feeling that that's all right, well, we'll go along with that. And by that I mean we're going to move this amendment when we get through here. Thank you.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, are we on now Mr. Artz' proposed amendment?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE BERG: Mr. Chairman, I move to amend the substitute motion of Mr. Artz, the minority, by deleting the words "with the exception of moneys contributed by individuals to retirement funds."

Mr. Chairman.

CHAIRMAN GRAYBILL: All right; you want to delete the first clause, is that right?

DELEGATE BERG: Yes.

CHAIRMAN GRAYBILL: So that you would make Mr. Artz' amendment read: "No public funds shall be invested in private corporate capital stock." Is that right?

DELEGATE BERG: That's correct.

CHAIRMAN GRAYBILL: Very well, you may speak.

DELEGATE BERG: Fellow delegates, there are many funds. I think I mentioned already the police retirement fund. These funds are administered by each separate city. Now, I asked Mr. Artz how it would be possible for those funds to be administered in such a way that the public portion—or the public contributions would be invested in one manner and the individual contributions, perhaps, in another manner; and he explained it that this can be done now by computerized equipment. I want to assure you that there is probably no city in the state that can afford that kind of computer equipment for the sole purpose of administering, for example, the police retirement fund. The firemen's fund, for example, is administered on contributions by the firemen and contributions by the respective cities and it's administered by the State Auditor. I doubt very much that the State Auditor in this state is now, or for a long time will be, financially able or equipped to computerize it so that he can make these investments on a different basis. But more important than that is that if it is important that state funds be safeguarded and not invested in corporate securities of questionable character, it is equally important that the employees' funds be equally safeguarded. In other words, the state is the trustee of those funds that are contributed by the employee, just as much as they are a trustee of the funds contributed by the particular unit of government. So that what I am asking by this amendment is to treat everyone equally and not compel cities and not compel the State Auditor and not compel the Public Retirement System to divulge in—to engage in two different types of investment programs, one for employees and one for the contributions made by the units of government.

CHAIRMAN GRAYBILL: Mr. Artz.

DELEGATE ARTZ: Mr. Chairman, I object to Mr. Berg's amendment to my amendment. It destroys the whole part of the trend there that public funds are to be treated differently than private funds. I maintain that the people who put their money in have the same right to have that money invested as they want, as I can do with mine in my own private investment program. If I want to fall off the tree, that's my business. That's their business. We have provided in the article for a unified investment program. There are computers available here. I would ask Mr. Berg to take a look in this building and go over to the Mitchell Building. That's no problem at all. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Berg's amendment to Mr. Artz' amendment. Mr. Berg would strike the first clause, the words "with the exception of moneys contributed by individuals to retirement funds." He'd strike that so the amendment read only: "No public funds shall be invested in private corporate capital stock." So many as shall be in favor of Mr. Berg's amendment, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: Mr. Berg's amendment is defeated. Mr. Artz, do you want to close?

DELEGATE ARTZ: Mr. Chairman, I take it from the vote on Mr. Swanberg's amendment, 21 to 65, that he was too conservative. I have felt all along that my proposal was a good compromise. As far as the school funds go, Mr. Barnard has an amendment number one which would allow a few words so that this would not interfere with the school people, the school committee's objective to have more conservative investment of their funds. We're not attempting here to say that the school funds cannot be invested more conservatively if they so wish. I might mention though in that fact, if you did put school moneys into the common stock market, and say you bought some KOA stock for a dollar and it went up to a thousand, you would have $999 profit; but as I interpret the law, that would all go into the permanent fund. We wouldn't get to use any of it this year, probably 5 percent; whereas if we'd made the same in interest, we would get to use 95 percent of it. That's just a little aside. Mr. Aasheim, I think, pretty well refuted Mr. Berthelson's remarks that this word "inviolate" is not quite as safe as it sounds. My only comment is that it does not insure against loss. It merely creates a possibility that the taxpayers will have to pay higher taxes to replace the money lost. Mr. Heliker was real worried about me not letting him gamble with his money; that he could make a lot. I assure him that there is no intention that—any money he puts into the school funds, he can tell them to do what he wants to with it under my proposal; but I still feel that he needs just a little more protection for the part the state put in, because I'd hate to see him completely broke. It would be nice if he had about 50 percent of it left. Mr. Berthelson and his remarks about Minnesota to me is merely an example of the pressure that would be put on to put yield ahead of security, and I would like to see the Legislature kept free from that kind of pressure. Mr. Drum said he has fallen off the limb. I'm wondering if he's trying to get a little equalization. Does he want all the taxpayers to take a fall with him? I am in complete agreement with Mr. Drum in the fact that we have had a lot of improvement in the investment procedure for the Montana funds, and I think the part of the proposal that both the majority and the minority agree on, the unified investment program, will make this better yet for the future. Mr. Drum said we could get good investment counsel and that that would insure us that we wouldn't lose any money in the stock market. Now, I've put some money in mutual funds, and they supposedly have real good investment counsel; they have computers and analyze the market and the whole thing. But look at their record, even the best of them. Some of them barely kept up with the Dow-Jones, and some of them went broke. Common stock is still a gamble. Unless the Constitution is changed, gambling is illegal. Now, tax relief that he was talking about could certainly turn into tax increases very, very easily. You always have losers when you have winners; it's still a gamble. Mr. Rygg, my impression of the majority of the speakers that talked to us did not support investing in common corporate stock. I know that the teachers' man was in favor of it, but the rest of them said they didn't think the people would go for it. Some of them were absolutely against it. I have the notes in my records. I talked to Aronow—Cedor Aronow, here. He went over to Piper-Jaffray about 10 years ago—they're supposed to be a reputable investment firm; they give good counsel—they told him to buy Penn State (Laughter)—or Penn Central, rather, excuse me. Now, you know what happened to Penn Central. Cedor was smart enough, he didn't do it. I'm sure that 10 years ago any investment counselor would have told you that Anaconda Company was a very good buy. I recommend that you read a current issue of one of the weekly magazines and can check on their condition today. Now, Mr. Furlong spoke about frailty. Let's protect the people from as much frailty as possible. I think this is a good way to go there. Mr. Mahoney spoke that school funds are more important. I agree with Mr. Mahoney; I think they are. But we also have $289,649 in other funds as of October 31, 1971. Finally, the thing I started off with; remember that security is first. Let's keep the money in Montana and let's leave this yield thing on the bottom of the thing. I would like a roll call vote, Mr. Chairman. Thank you.

CHAIRMAN GRAYBILL: Very well, we'll have a roll call vote on Mr. Artz' proposal that we add this language: "With the exception of moneys contributed by individuals to retirement funds, no public funds shall be invested in private corporate capital stock." We're going to add that language to the majority's Section 13. So many as shall be in favor of Mr. Artz' proposal, vote Aye; so many as are opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, the ballot's closed. Please take it.

Aasheim	Aye
Anderson, J.	Aye
Anderson, O.	Nay
Arbanas	Excused
Arness	Nay
Aronow	Aye
Artz	Aye
Ask	Aye
Babcock	Aye
Barnard	Aye
Bates	Aye
Belcher	Excused
Berg	Nay
Berthelson	Nay
Blaylock	Aye
Blend	Aye
Bowman	Nay
Brazier	Aye
Brown	Nay
Bugbee	Nay
Burkhardt	Nay
Cain	Aye
Campbell	Nay
Cate	Absent
Champoux	Aye
Choate	Aye
Conover	Aye
Cross	Aye
Dahood	Aye
Davis	Aye
Delaney	Aye

Driscoll	Nay
Drum	Nay
Eck	Nay
Erdmann	Aye
Eskildsen	Excused
Etchart	Aye
Felt	Excused
Foster	Nay
Furlong	Nay
Garlington	Nay
Gysler	Aye
Habedank	Nay
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Absent
Harlow	Nay
Harper	Nay
Harrington	Absent
Heliker	Nay
Holland	Excused
Jacobsen	Nay
James	Aye
Johnson	Aye
Joyce	Nay
Kamhoot	Aye
Kelleher	Nay
Leuthold	Aye
Loendorf	Nay
Lorello	Absent
Mahoney	Aye
Mansfield	Aye
Martin	Nay
McCarvel	Aye
McDonough	Nay
McKeon	Aye
McNeil	Aye
Melvin	Nay
Monroe	Aye
Murray	Nay
Noble	Aye
Nutting	Nay
Payne	Nay
Pemberton	Aye
Rebal	Aye
Reichert	Aye
Robinson	Aye
Roeder	Nay
Rollins	Nay
Romney	Aye
Rygg	Nay
Scanlin	Aye
Schiltz	Aye
Siderius	Aye
Simon	Aye
Skari	Nay
Sparks	Absent
Speer	Nay
Studer	Absent
Sullivan	Aye
Swanberg	Aye
Toole	Absent
Van Buskirk	Nay
Vermillion	Aye
Wagner	Aye
Ward	Aye
Warden	Aye
Wilson	Aye
Woodmansey	Aye
Mr. Chairman	Aye

CLERK HANSON: Mr. Chairman, 53 voting Aye, 35 voting No.

CHAIRMAN GRAYBILL: 53 having voted Aye, 35 No, Mr. Artz' amendment passes and it's adopted.

The Chair will recognize Mr. Barnard.

DELEGATE BARNARD: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Barnard has two amendments on your desk. The Chair has, for purposes of clarification, numbered the long one as Number 1 and the short one as Number 2. Mr. Barnard, which do you want to move first?

DELEGATE BARNARD: Mr. President, I move the Number 1 first, but I would like to call to your attention that we do have a substitute amendment here, this yellow sheet, where we missed a few words in the Number 1.

CHAIRMAN GRAYBILL: Very well, Mr. Barnard wants to amend Number 1 on the third line. Take Number 1, the long amendment of Mr. Barnard's; on the third line it says "public school fund and the"—and he wants to put in the word "permanent" there. So write the word "permanent"—"and the permanent funds of the State University". Line 3—add the word "permanent" after the word "the" so it reads: "and the permanent funds". And then on the fourth line, after the word "learning", he wants to strike "from whatever sources accruing"—those four words. Strike "from whatever sources accruing" on line 4 and 5. Will the clerk please read Mr. Barnard's amendment as—oh, first of all, let me put it this way. Is there any objection to that? If not, all in favor say Aye—of allowing that amendment.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No reponse)

CHAIRMAN GRAYBILL: Very well, now we have Mr. Barnard's Number 1. May the clerk read it, Mr. Barnard?

DELEGATE BARNARD: Yes, the clerk may.

CLERK HANSON: "Mr. Chairman. I move to amend Section 13, page 29, line 21, of the Revenue and Finance Committee Proposal by adding a new subsection 2 to read as follows: 'Subsection 2. The public school fund shall forever remain inviolate and guaranteed against loss or diversion by the state. The public school fund and the permanent funds of the state university and of all other state institutions of learning shall be safely and conservatively invested in public securities within the state, or in bonds of the United States, or in other securities fully guaranteed as to principal and interest by the United States, or in other such safe investments bearing a fixed rate of interest, as may be prescribed by law.' Signed: Barnard."

CHAIRMAN GRAYBILL: Mr. Clerk, may I have that back? Now, Mr. Barnard's amendment has the effect of adding this language as a subsection 2 to Section 13. Very well.
Mr. Barnard.

DELEGATE BARNARD: Mr. President, this is essentially the minority report of the Committee on Education and it's almost—the language isn't quite identical but it actually has the same effect as the language in Article XXI of the Constitution, and I'd like to run over it rather briefly. It says, "shall be safely and conservatively invested in public securities within the state." And the first thing you'd say is "within the state"—I mean, and by saying "public securities"—

CHAIRMAN GRAYBILL: Hold your mike up, Mr. Barnard.

DELEGATE BARNARD: —we mean all securities. We don't want to limit it to state bonds, or cities or towns. We mean everything within the state that issues this type of securities or in bonds of the United States or in other securities fully guaranteed as to principal and interest by the United States. Now, someone said awhile ago that there's a limitation here, that there's a lot of things the United States government guarantees that you couldn't invest in. It says—but you will notice this—it says "or in other securities", which would include all other securities fully guaranteed by the United States government as to principal and interest. It also goes further and says, "or in other such safe investments bearing a fixed rate of interest, as may be prescribed by law." In other words, what we're trying to do here is tie these funds down a little bit tighter than some of the others are, because they are—in other words, we want to stay within the limits of the Enabling Act and we want to see that the funds remain inviolate. I happen to have been in the Legislature when the State of Montana had to put in about four and a half million dollars in taxpayers' money to repay some of the losses because of poor investments. There was an argument; it was discussed on the floor; it went over several years of time. I think that's about all I need to say about that—it's—. Again, one thing I might mention, it does eliminate, I believe, investment in corporate bonds; and that was the intention of the minority report of the Education Committee. And we decided that the proper place that it belonged was in the Revenue and Finance report.

CHAIRMAN GRAYBILL: Very well, is there discussion on Mr. Barnard's amendment?
Mr. Davis.

DELEGATE DAVIS: Fellow delegates, we worked and tried to work out a Trust and Legacy Article, and that is—has 17 sections in it, if you recall, and they are extremely confusing and most of them are obsolete; so if we can dovetail the Education, it'll be in this article. There's not going to be a separate Trust and Legacy Article, to our knowledge, unless someone puts it in. This is a further restriction that Mr. Barnard has requested to apply only to the public school fund, and those funds are set out in this excellent treatment under Taxation and Finance you have. It outlines them all and gives a good history on them. The last sentence of Mr. Barnard's proposal says: "or in such other safe investments bearing a fixed rate of interest, as may be provided by law", so that opens the door about as completely as you can. So it looks like you can invest in anything as long as it's not limited by the previous one on stocks. The first part of it, I think, is extremely important, that the public school fund shall remain inviolate and guaranteed against loss or diversion. There's been some discussion here this afternoon, and I think we ought to clarify that at this time. In 1917, the Legislative Assembly passed the Farm Loan Act as part of the—and as a part of which school permanent funds could be invested in farm loans. Beginning around this time and continuing for several years, drouth and adverse conditions placed the farmers and ranchers in a precarious economic condition. In the 1917 act, the State Land Board loaned school money from the school permanent fund to ranchers and farmers and took first mortgages as security. The mortgagee was the state. By June 1922, there were 2,291 loans on the books valued at $4,517,882 with delinquent interest at 6 percent of $282,574.77. Up to that time the State—Department of State Lands and Investments was forced to pay out $45,297 for taxes in order to protect the state's title to these mortgaged lands. In 1923, seventy-nine thousand-some dollars was invested, and another hundred thousand in '24; and this act was repealed in 1933, and 85 percent of all the lands given as security were obtained by the state through foreclosure of quit claim deeds. And the state then found that they had an unpaid principal invested, including unpaid taxes and other costs, exclusive of all unpaid interest of $4,250,625. The Legislative Assembly was pressured by the school interests and they passed legislation to repay the principal amount to the permanent school fund. To do this, they set up a farm loan sinking fund and took over and administered all the foreclosed lands. The income went in the sinking fund and was then paid to the school fund. During this period, the original owners were given time to redeem their farms, up until March of '41. In all, 2,363 original loans were made and there were eight hundred and three-some thousand acres involved. After the principal had been paid to the permanent fund, it was suggested to the Legislative Assembly that the permanent school fund was in arrears a good share of interest on its money between the years 1916, when the first loan was made, and the time the state assumed responsibility, in 1933. Even after that date, any unpaid principal was earning only 2 percent as against the original loans which carried 6. In 1949, a bill was passed to repay this interest due from the state farm loan sinking fund at a rate on the loans, less this 2 percent interest already paid. This continued in 1953, when a million seven hundred and thirty-seven thousand was still due in interest. A bill was then presented to the Legislative Assembly stating the state would turn over the remaining 340,979 acres of farmlands into the permanent school fund as repayment in full of the interest due, and this bill was passed. With this strong statement, Mr. Barnard has—it's the same as is contained in the existing Constitution—that they'll remain inviolate and guaranteed by the state against loss or diversion. And that has happened in our history of Montana, and we should keep it in there; and I think we should take his restriction on this $52 million of state funds—and we also have many more dollars coming in through the sale of state lands, royalties and depletion allowances. Thank you.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: One other comment, if I may. Some of you may wonder why we are also including this in here at this point. Part of the Enabling Act indicates we have to apply some measure of protection, and in 1964 the U.S. government set up a commission to attempt to get rid of all of these enabling acts. As a matter of fact, there has been some that have already gotten rid of, so this is simply to further protect these funds if the Enabling Act happens to be simply eliminated by the federal government. Thank you.

CHAIRMAN GRAYBILL: Mr. Conover.

DELEGATE CONOVER: Mr. President, I rise in support of this amendment to the Taxation and Finance. This is part of our Education proposal, and I am very interested in secure and safe investments of our school funds, and I hope that you will support it.

CHAIRMAN GRAYBILL: Mr. Woodmansey.

DELEGATE WOODMANSEY: I ask for a roll call vote.

CHAIRMAN GRAYBILL: Well, we're not going to vote yet. Is there any other discussion?

(No response)

CHAIRMAN GRAYBILL: Very well. Mr. McDonough, will you yield to a question from the Chair, if nobody else will ask you?

DELEGATE McDONOUGH: Yes, sir.

CHAIRMAN GRAYBILL: I'm disturbed by the phrase in—"shall be safely and conservatively invested in public securities within the state." I don't know what that means. Do you?

DELEGATE McDONOUGH: Not too

well, but I think it means municipal bonds issued within the State of Montana by its subdivisions.

CHAIRMAN GRAYBILL: Would you yield to another question?

DELEGATE McDONOUGH: Yes, sir.

CHAIRMAN GRAYBILL: Could a court interpret that to mean that—a publicly issued stock of a Montana company?

DELEGATE McDONOUGH: It could be interpreted that way on an issue that's only sold within the state so it doesn't have to be any registration statements filed and so forth and so on, other than with the Auditor.

CHAIRMAN GRAYBILL: If it's publicly issued and is a security within the state, would that language cover it?

DELEGATE McDONOUGH: I—if they don't look at anything else, it certainly would cover it and say that it could be invested.

CHAIRMAN GRAYBILL: Mr. Barnard, would you yield to a question from the Chair?

DELEGATE BARNARD: Yes, I would.

CHAIRMAN GRAYBILL: Is it your intention to allow the public school funds to be invested in private stock of Montana—of corporations, private corporations that publicly issue stock but are limited to Montana only?

DELEGATE BARNARD: Would the Chair repeat the question again? I'm a little bit hard of hearing.

CHAIRMAN GRAYBILL: Right. The words are "public securities within the state", and a private Montana corporation could publicly issue securities within the state without being subject to SEC regulations. I want to know if that language means that the state school money could be invested in them, which obviously would be unsafe, or why it couldn't be that—interpreted that way? Is that what you intend? That's my question.

DELEGATE BARNARD: Well, Mr. Chairman—Mr. President, rather—I think that's an oversight on the part of the—when we drafted this legislation and I think that we should put the words "State of Montana" in there, and I'll so move.

CHAIRMAN GRAYBILL: You mean "public securities of the State of Montana"? I don't understand.

DELEGATE BARNARD: Not "of the State of Montana", but "within the State of Montana", so it could include school districts and cities and all of those other things.

CHAIRMAN GRAYBILL: The Chair is only concerned—I'm sure you intend to mean municipalities, Montana municipalities. But that—the Chair is concerned, and some of the lawyers here should become concerned and decide what to do here. I'm not trying to write it. I'm just raising the issue of whether or not those words don't allow us, if we pass them, to invest in the public stock—publicly offered stock of private Montana corporations, which obviously would not necessarily be a good investment.

DELEGATE BARNARD: I know it was certainly not the intention of the committee, either the majority or the minority, and if there's need for correction of the wording there, I'd certainly—glad to accede to anything that would be practical.

CHAIRMAN GRAYBILL: Mrs. Cain.

DELEGATE CAIN: The words are taken from Section 3 of the existing Constitution—"in public securities within the state". What Mr. Barnard and the rest of us who signed the minority meant—securities of the State of Montana and its political subdivisions.

CHAIRMAN GRAYBILL: Mr. Champoux, I'll recognize you, but is Mr. McDonough working on the problem?

DELEGATE CHAMPOUX: I'm going to move—are you going to move?

CHAIRMAN GRAYBILL: All right, go ahead.

DELEGATE McDONOUGH: Mr. President, I wonder if Mr. Barnard would accept this: "invested in public securities of the state, its subdivisions, local governmental units and districts."

DELEGATE BARNARD: Mr. President, I wonder if the gentleman would repeat the statement a little bit louder. I just didn't catch quite all of that.

DELEGATE McDONOUGH: "—invested in public securities of the state, its subdivisions, local governmental units and districts."

DELEGATE BARNARD: I certainly would.

CHAIRMAN GRAYBILL: Very well, Mr. Barnard proposes that we amend his amendment here by adding, on the fourth from the bottom line, after the word "securities", the words "securities of the state, its subdivisions and local governmental units and districts within the state." So that the sentence would be—the clause would be that the funds of—the public school funds may be—"shall be safely and conservatively invested in public securities of the state, its subdivisions and local governmental units and districts within the state, or in bonds—" Now, is there any discussion of the proposed interlineation amendment here that we've made?

Mr. Choate—Mr. Conover.

DELEGATE CONOVER: Would you repeat that, Mr. President? Would you repeat that again?

CHAIRMAN GRAYBILL: Right. Four lines from the bottom, after the word "securities", we write in "of the state, its subdivisions and local governmental units and districts within the state"—the "within the state"is there. All in favor of that interlineation, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: Very well. I don't like to interfere up here, but I don't think we want to get that adopted unless we know what it means. Is there further discussion of Mr. Barnard's language?

(No response)

CHAIRMAN GRAYBILL: Mr. Barnard, would you like to close?

DELEGATE BARNARD: Yes, I'd like to close, Mr. President, but I don't think there's much more to be said. I think most everybody has their mind made up. We just want to add a little more security to these trust funds, be a little more in compliance with the Enabling Act; and I think that's all I have to say.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Barnard's amendment, which would add a Section—subsection 2 to Section 13, which would read: "The public school fund shall remain forever inviolate and guaranteed against loss or diversion by the state. The public school fund and the permanent funds of the State University and all other state institutions of learning shall be safely and conservatively invested in public securities of the state, its subdivisions and local governmental units and districts within the state, or in bonds of the United States, or in other securities fully guaranteed as to principal and interest by the United States, or in other such safe investments bearing a fixed rate of interest, as may be prescribed by law." Did you ask for a roll call vote?

DELEGATE WOODMANSEY: Yes.

CHAIRMAN GRAYBILL: All right, roll call vote. So many as shall be in favor of Mr. Barnard's amendment, vote Aye; so many as shall be opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, the vote is closed. Please take the vote.

Aasheim	Aye
Anderson, J.	Aye
Anderson, O.	Absent
Arbanas	Excused
Arness	Absent
Aronow	Absent
Artz	Absent
Ask	Absent
Babcock	Aye
Barnard	Aye
Bates	Aye
Belcher	Excused
Berg	Aye
Berthelson	Nay
Blaylock	Aye
Blend	Aye
Bowman	Absent
Brazier	Aye
Brown	Nay
Bugbee	Aye
Burkhardt	Aye
Cain	Aye
Campbell	Aye
Cate	Absent
Champoux	Aye
Choate	Aye
Conover	Aye

Cross	Aye
Dahood	Absent
Davis	Aye
Delaney	Aye
Driscoll	Absent
Drum	Absent
Eck	Aye
Erdmann	Aye
Eskildsen	Excused
Etchart	Absent
Felt	Excused
Foster	Nay
Furlong	Aye
Garlington	Nay
Gysler	Aye
Habedank	Aye
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Absent
Harlow	Nay
Harper	Nay
Harrington	Absent
Heliker	Nay
Holland	Absent
Jacobsen	Aye
James	Aye
Johnson	Absent
Joyce	Absent
Kamhoot	Aye
Kelleher	Aye
Leuthold	Aye
Loendorf	Nay
Lorello	Absent
Mahoney	Absent
Mansfield	Aye
Martin	Aye
McCarvel	Absent
McDonough	Aye
McKeon	Aye
McNeil	Aye
Melvin	Aye
Monroe	Aye
Murray	Absent
Noble	Aye
Nutting	Nay
Payne	Aye
Pemberton	Aye
Rebal	Aye
Reichert	Aye
Robinson	Aye
Roeder	Nay
Rollins	Nay
Romney	Aye
Rygg	Aye
Scanlin	Nay
Schiltz	Nay
Siderius	Aye
Simon	Aye
Skari	Aye
Sparks	Absent
Speer	Absent
Studer	Absent
Sullivan	Aye
Swanberg	Aye
Toole	Aye
Van Buskirk	Absent
Vermillion	Aye
Wagner	Aye
Ward	Aye
Warden	Aye
Wilson	Aye
Woodmansey	Aye
Mr. Chairman	Aye

CLERK SMITH: Mr. Chairman, 59 voting Aye, 14 [13] voting No.

CHAIRMAN GRAYBILL: 59 having voted Aye and only 14 [13] No, Mr. Barnard's amendment as adopted is adopted—his amendment as amended is adopted. Mr. Barnard, do you want to make Number 2? Very well, Mr. Garlington was sitting in my seat, pushed my button instead of his. May the journal show that my vote is Mr. Garlington's, to keep him out of jail. I trust that's not a habit of yours, Mr. Garlington. (Laughter) Very well.

Mr. Barnard.

DELEGATE BARNARD: Mr. Chairman, first a point of information. Some of these attorneys may be—I wonder if this amendment, which states—oh, let's see, I have the wrong one. Well, the subject—here it is—the amendment is—provides that—to amend the Section 13, page 29, line 12 of the Revenue and Finance Committee Proposal by inserting, after the word "funds", the following words: "not otherwise constitutionally restricted." Now, I'm wondering—we don't want to remove this from the permanent—from the regular investment funds; that is, we want it to remain a part of the unified investment program, but we just want these limits on it. Now, is this necessary—that we put this amendment in there? Or should it—or is it necessary? If it isn't necessary, let's leave it out.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: It isn't necessary and it might actually be too restrictive, because the school funds should be under the unified investment program but they can be segregated and be separate to comply with the other amendment. So it should not be in here as you want to amend it. It should be out, left out.

DELEGATE BARNARD: Well, that's—Mr. President—

CHAIRMAN GRAYBILL: You withdraw it, then?

DELEGATE BARNARD: If that's my understanding—that this might remove this school fund from the unified investment program, I will withdraw the amendment if Mr. Champoux and the others are in agreement.

DELEGATE McDONOUGH: It might not remove it from the unified investment program. It probably will not remove it from that program, but it will restrict to—the investors of the program to the paragraph that was just enacted. You don't want to take it out of the program, because you have it pretty well restricted as to what they can invest it in, but you want to leave it in the program.

DELEGATE BARNARD: Yes, we want to leave it in the program; but is this amendment necessary? I don't want to clutter up the record with unnecessary amendments.

DELEGATE McDONOUGH: No, your amendment is not necessary.

DELEGATE BARNARD: Well, very well then, I will withdraw the—

CHAIRMAN GRAYBILL: Very well, Mr. Barnard's amendment—

DELEGATE BARNARD: —motion with the understanding that it is not necessary to accomplish what we're trying to do.

CHAIRMAN GRAYBILL: Mr. Barnard's amendment is withdrawn. Now, Mr. Davis, are you in the room? I want to finish up Section 13 if I can here.

Mr. Brown.

DELEGATE BROWN: I'll make mine in his absence. Mr. President, on line 15—or page 15, after the word "Governor", I want to insert the word "and" and delete—after "Legislative Assembly", there would be a period—and delete "and Chief Justice of the Supreme Court".

CHAIRMAN GRAYBILL: Very well, Mr. Brown has proposed to amend Section 13 as proposed by the committee, on lines 3 and 4 of page 15. He wants to add the word "and" between "Governor" and "Legislative Assembly" and strike the words "and Chief Justice of the Supreme Court". So it will read as follows: "An audit of the investment program shall be conducted at least annually and submitted to the Governor and Legislative Assembly period". Is that the sense of your amendment?

DELEGATE BROWN: Yes, Mr. President.

CHAIRMAN GRAYBILL: Mr. Brown, you may speak.

DELEGATE BROWN: Mr. President, if this group, the Governor, the Legislative Assembly and Chief Justice, found mismanagement in this fund, they might recommend civil action or criminal action and would, in effect, having the Chief Justice of our Supreme Court recommending some action against an individual and later may be appealed to that very court. And I don't think any auditing of any other branch of government should be involved with the Judicial, and there's sufficient protection if it's reported to the Governor and the Assembly.

CHAIRMAN GRAYBILL: Very well, is there discussion?

(No response)

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Brown's amendment to take "the Chief Justice of the Supreme Court" out of the audit process and put an "and" between "Governor" and "Legislative Assembly". So many as shall favor that amendment, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: It's adopted.

Mr. Brown—or Mr. Davis.

DELEGATE DAVIS: Mr. President, I withdraw that amendment I had previously given to you.

CHAIRMAN GRAYBILL: Very well. Are there other amendments to Section 13?

Mr. Heliker, Section 13?

DELEGATE HELIKER: Mr. Chairman, I move to amend Section 13 as amended, on page 36, line 13, by deleting the words "individuals"—"by individuals" after the word "contributed". Page 36, line 13.

CHAIRMAN GRAYBILL: Very well, Mr. Heliker proposes an amendment. It's to the sentence that the minority suggested; in other words, it's to the Artz amendment. You'll find it on page 36, on line 13, and he would delete the words "by individuals" so that the sentence reads: "With the exception of moneys contributed to retirement funds, no public funds shall be invested in private corporate capital stock."

DELEGATE HELIKER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: My point here is that, although at the present time the language as adopted would probably not do any damage to the retirement fund, because 50 percent of the contributions—at least this is true of the Teachers' Retirement System—are individually contributed funds, and I don't think any fund managers would want to put more than 50 percent into common stocks. In the future it is entirely possible that the individual contribution will be reduced or even eliminated entirely. I don't have the figures before me, but I have seen them and it is—I think it is the case that in about half of the state universities—and I don't know about the public school systems in this country—that the contribution to the retirement fund is entirely by the employer. And this is the trend, clearly; and we may very well get to that point in Montana, which would mean that all of the contribution to the retirement fund would be by the state. And what we—by the language we have adopted here today, it would mean none of it could be invested in common stocks, which I think would be, as I said before, robbing the people affected of the potential retirement income. And we have, incidentally, sitting right here on the floor today a perfect example of that. My good friend, Lucile Speer, who worked for 40 years under the Teachers' Retirement System, whose retirement pay today would probably be twice as high if it hadn't been for this constitutional restriction. Now, while I'm on my feet, I would like to ask Delegate Berg to yield to a question.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: I yield.

DELEGATE HELIKER: Mr. Berg, Mr. Berthelson brought to my attention that you have some question concerning the legal effect of this sentence, this whole sentence; and I wonder if there is such a—if there's a problem there which I don't understand, on the basis of what Mr. Berthelson said, that you would elucidate for the benefit of the committee.

DELEGATE BERG: Well, I think what he has reference to is that, in my opinion, the limitation of just corporate funds is not adequate. My personal viewpoint on it is that always—that public funds have been limited, generally speaking, to bonds, United States government securities, and investments of that character; and I feel that if you simply limit it to corporate funds, you leave it open to the Legislature—to a very wide-open field to them. I felt that if you were going to put limitations on it, you ought to put on the limitations that we've lived under most of these years and under which most funds have operated.

DELEGATE HELIKER: All right, I think I see what you are driving at, but there is nothing in this which would require the fund managers to invest in any particular securities as is written here.

DELEGATE BERG: If—the only limitation here now is to—is on corporate stock, at the present time.

DELEGATE HELIKER: Well, there's no limitation on that either, is there? This sentence exempts the retirement funds from that restriction.

DELEGATE BERG: That's correct. It would, as you have amended it. It would have only applied to investments of individuals prior to that time.

DELEGATE HELIKER: I didn't hear you.

DELEGATE BERG: As I read the sentence as it is now enacted, it is "With the exception of moneys contributed by individuals to retirement funds, no public funds shall be invested in private corporate capital stock." Now, I would take that to mean that individuals' investments in private funds could be invested in corporate stock but that public funds could not.

DELEGATE HELIKER: All right, now, if we adopted my—the amendment I've just proposed, in your opinion how would that—

DELEGATE BERG: That would, then, permit the investment of both. Well, I'm not quite certain that that does what you would like it to do.

DELEGATE HELIKER: Well, that's what I'd like to know.

DELEGATE BERG: I doubt that it would permit the use of public funds—the investment of corporate funds in private stock if they come either from the public or individuals. That would be my construction.

DELEGATE HELIKER: Well, as I would read it, this would say that—"with the exception of moneys contributed to retirement funds", so that's a definite exception.

DELEGATE BERG: Yes. I'm sorry, you're correct. I'm sorry. The construction would be, if your amendment succeeds, that retirement funds would be exempt from the prohibition of investment in private corporate capital stock.

DELEGATE HELIKER: Yes.

DELEGATE BERG: That's correct.

DELEGATE HELIKER: Okay, fine.

CHAIRMAN GRAYBILL: Is there further discussion? (No response) If not, the question is on Mr. Heliker's amendment to the Artz amendment, which is now part of Section 13. He would delete the words "by individuals", on page 36, line 13, so that the amendment would now read: "With the exception of moneys contributed to retirement funds, no public funds shall be invested in private corporate capital stock." This would have the effect of allowing money to be invested in private corporate capital stock in the case of retirement funds, whether contributed by individuals or by the state. So many as are in favor of that amendment, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted. Are there other amendments to Section 13? (No response) If not, Mr. Rygg, will you remove Section 13 as amended?

DELEGATE RYGG: Mr. Chairman, when this committee rises and report[s], after having had under consideration Section 13 as amended, I move it be adopted.

CHAIRMAN GRAYBILL: So many as shall be in favor of this motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted as amended. Now, ladies and gentlemen, I'd like your attention a minute, especially in the gallery. A purse belonging to Mignon Waterman has been found and is in the Chief Clerk's office. The Chair wishes to tell the body that we have—I'm going to recess for a few minutes—we have before us still two new—well, let me ask Mr. Rygg this. What's the committee's proposal on Section 14?

DELEGATE RYGG: We plan to delete the entire section, Mr. Chairman.

CHAIRMAN GRAYBILL: All right, we have, then, the deletion of Section 14 to consider, two new sections to consider, and one reconsideration to consider, at least—maybe two. The Chair also wishes to point out that I want to finish that, which finishes Revenue and Finance on time. We were supposed to cover style on Legislative today, and we will be three—actually, four articles behind on Style and Drafting as of Tuesday morning. The Chair does not like to announce a Monday session this late in the game for next Monday, so I won't have a Monday session, but I want everyone to be aware that we're way behind on Style and Drafting, although we're up-to-date on the debate portions. Since we're debating Bill of Rights next week and have only 2 days for it, our up-to-dateness may be short-lived. (Laughter) But the Chair would now entertain, Mr. Murray, a motion to recess for 15 minutes, and then we'll come back and finish up the rest of Revenue and Finance, and I'd like you to stay with us, ladies and gentlemen.

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move the committee recess for 15 minutes.

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: So ordered.

(Committee recessed at 4:22 p.m.—reconvened at 4:44 p.m.)

CHAIRMAN GRAYBILL: The committee will be in session. Ladies and gentlemen, when the committee recessed, we were about to consider Section 14. Mr. Clerk, read Section 14, please.

CLERK HANSON: "Section 14. Agricultural levies. A special levy may be made on livestock and agricultural commodities for the purpose of disease control and indemnification, predator control, livestock inspection and protection, agricultural inspection and protection, livestock and agricultural commodity research and promotion." Mr. Chairman, Section 14.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 14 of Revenue and Finance Proposal 7, that it delete the entire article.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: This is the same language that was adopted by the other committee the other night, so it is no longer needed in our proposal. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: All in favor of Mr. Rygg's motion that we delete Section 14 when we report, please signify by saying Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: Section 14 is deleted. Now we are ready to take up two new sections that have been proposed. First of all, Mr. Kelleher, you have a proposal, which we will style Section 15. May we read it from—may the clerk read it?

DELEGATE KELLEHER: Yes.

CHAIRMAN GRAYBILL: Will the clerk read proposed Section 15.

CLERK HANSON: "Mr. Chairman. I move to amend the majority proposal of the Revenue and Finance Committee proposal by adding a new section on page 15, line 11, as follows: 'Section 15. The Legislature shall enact no additional sales or use tax other than those in force on December 31, 1971, provided that it may increase such taxes in existence on that date.' Signed: Kelleher."

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, the sales tax usually starts at 2 percent and then it usually goes up to 7-6 or 9-7 percent, as it has in New York; and the Soviet Union has went up as high as a hundred percent. It was an issue in the 1968 campaign. It helped elect the present Governor, and then it was again resurrected last November and defeated by a majority of almost three to one. I would like to dispose of it once and for all by outlawing it in the Constitution and at the same time guarantee support for the Constitution. In conclusion, the only objection I have heard to a unicameral Legislature is the ungrounded fear that it might pay us a sales tax. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I would like to resist this addition to Revenue and Finance. I really don't think it's anything we should write into a constitution. We are supposed to be planning one for the needs of the state for years ahead, and I don't believe we could possibly foresee that there should never be any other sales or use tax than is in force right now. So I would resist it, and I hope the committee does, too. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: The Chair is having a hard time trying to see who wants to speak and who wants to sit down. Is there any further discussion?
(No response)

CHAIRMAN GRAYBILL: Mr. Kelleher, do you want to close?

DELEGATE KELLEHER: No. Could I have five seconds, please?

CHAIRMAN GRAYBILL: Very well, Mr. Kelleher has asked for a roll call vote. The issue is on Mr. Kelleher's proposed Section 15. Members of the committee, you have before you Mr. Kelleher's proposed Section 15 and his motion that when this committee does arise and report, after having had under consideration his proposed Section 15, that it recommend the same be adopted. So many as are in favor, vote Aye on the voting machines; and so many as are opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, take the ballot.

Aasheim	Nay
Anderson, J.	Nay
Anderson, O.	Absent
Arbanas	Excused
Arness	Nay
Aronow	Nay
Artz	Nay
Ask	Nay
Babcock	Nay
Barnard	Nay
Bates	Nay
Belcher	Excused
Berg	Nay
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Nay
Brazier	Nay
Brown	Absent
Bugbee	Nay
Burkhardt	Nay
Cain	Nay
Campbell	Nay
Cate	Absent
Champoux	Absent
Choate	Nay
Cross	Aye
Conover	Nay
Dahood	Absent
Davis	Nay
Delaney	Nay
Driscoll	Nay
Drum	Nay
Eck	Nay
Erdmann	Nay
Eskildsen	Excused
Etchart	Nay
Felt	Excused
Foster	Nay
Furlong	Nay
Garlington	Nay
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Nay
Harlow	Aye
Harper	Nay
Harrington	Absent
Heliker	Aye
Holland	Excused
Jacobsen	Nay
James	Nay
Johnson	Nay
Joyce	Nay
Kamhoot	Nay
Kelleher	Aye
Leuthold	Nay
Loendorf	Nay
Lorello	Absent
Mahoney	Nay
Mansfield	Nay
Martin	Nay
McCarvel	Aye
McDonough	Nay
McKeon	Aye
McNeil	Nay
Melvin	Nay
Monroe	Aye
Murray	Nay
Noble	Nay
Nutting	Nay
Payne	Absent
Pemberton	Nay
Rebal	Nay
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	Aye
Rygg	Nay
Scanlin	Nay
Schiltz	Absent
Siderius	Aye
Simon	Nay
Skari	Nay
Sparks	Absent
Speer	Nay
Studer	Absent
Sullivan	Nay
Swanberg	Nay
Toole	Nay
Van Buskirk	Absent
Vermillion	Nay
Wagner, R.	Nay

Ward	Nay
Warden	Nay
Wilson	Nay
Woodmansey	Nay
Mr. Chairman	Nay

CLERK HANSON: Mr. Chairman, 9 delegates voting Aye, 74 voting No.

CHAIRMAN GRAYBILL: 74 having voted No and only 9 having voted Aye, Mr. Kelleher's motion fails.

Mr. Aasheim, you have sent to the Chair a proposed amendment which is out on the desks; and we've changed Mr. Aasheim's proposed amendment to a Section 16 instead of a Section 15.

Mr. Aasheim.

CLERK HANSON: Mrs. Cross is up.

CHAIRMAN GRAYBILL: Yes, Mrs. Cross. Excuse me; I couldn't see.

DELEGATE CROSS: Mr. Chairman, I would like to explain my vote. I think that Mr. Kelleher deserves support sometime. He has supported me, in effect, many times, so this time, Bob, I wanted to support you, though in theory I think your motion was probably not too sensible. (Laughter)

CHAIRMAN GRAYBILL: Well, at least the last word of your statement, Mrs. Cross, was straight to the point. (Laughter) Very well, you have before you on your desk the proposed amendment by Mr. Aasheim, an additional section; please style it 16. And Mr. Aasheim, may we read it?

DELEGATE AASHEIM: Yes.

CHAIRMAN GRAYBILL: Will the clerk please read proposed Section 16.

CLERK HANSON: "Mr. Chairman. I move to amend Revenue and Finance majority proposal, page 15, line 11, by adding a new Section 16 to read as follows: 'The rate of taxation on real and personal property for the operation of state government shall not exceed 2 mills on each dollar of valuation unless a proposition to increase such rate, specifying the rate proposed and the time during which such rate shall be levied, shall have been submitted to the people at a general election and shall have received a majority of all votes cast for and against it at such election.' Signed: Aasheim."

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman, members of the delegate assembly. Yesterday, I believe it was—it seems like a long time ago when we first started this article—and I want to say that this committee has done a tremendous job. It's likened to an oak tree. It has grown tall and straight and well, with very little pruning. Now, I would like to do just a little grafting and make the tree perfect. Yesterday morning we were talking about equalization and I said I believed in equalization. I think we need it on a state level in order to prepare for the future and also to take care of the present, because we have a foundation program that is predicated on equalization. I have included here a section which is practically verbatim to the current Constitution and that is to guard, protect the property owner from the wiles of an overzealous Legislature. I have confidence in it—in them usually, but they have moments of weakness; they're human. And I propose this amendment to give protection to the property owner from a Legislature that is in search of funds for the operation of state government. Now, please note that we are talking about state government. I feel very sincerely and very, very much the need to protect the property tax levies for local purposes. I suppose you are all cognizant of the fact that cities and counties and school districts pretty much depend on property for their revenue. Towns and counties pretty much entirely so. And it is the prerogative of the people to vote themselves taxes on these levels. I think it should be that way. Consequently, I, with this amendment—to maintain this amendment as at present. I'm asking to reinstitute it in this new Constitution. Now, at first I had—I was warned that if you put this in now with the California case, the Serrano case, facing us, that we must have equalization, and a similar case in Texas and in other states; possibly the one in Texas is more pertinent to us than the California case. But we do not know if these cases are going to apply to Montana. Let's not be afraid of this California bear until we see the whites of his eyes. Let's not worry about this Texas longhorn; if he comes, we'll dehorn him. Because we don't know but what our present foundation program will not comply with the standards which the federal courts might impose. So let's not cry wolf now and leave the doors open. However, I have left the doors open. In the last sentence you will find that if the Legislature finds itself in a bind and needs more money under this equalization which we think might come under these federal cases, the Legislature can then go to the people and ask for this money. I think this is democratic. I think it will protect the property owner, which I think that he is going to ask for in this new equalization program we have.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I seem to find it necessary to resist the motion of my good friend, Aasheim. I really do believe if we added this section to our proposal, we would probably be overturning much of what we have done in the last couple of days. Naturally, I would like to know, too, that we would never need over 2 mills. But regardless of the California bear and the Texas longhorn, I think we will have to be prepared for the eventuality, and I can't see where we would be preparing ourselves for that if we should lock this 2-mill levy in the Constitution again. Actually, when we were discussing other articles in our committee, this 2-mill levy, of course, came up; and we decided that if we were going to write a Constitution for the future, one that would serve Montana for years to come, there would be no way of retaining this restriction. I admit we don't know what the courts will say about equalization, but I do believe we agreed that we would have to consider state financing of schools. And if we are to do that, I don't see how we could do it with this limitation, so I would resist the addition to the proposal. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: Mr. Chairman, the Serrano case in California is still an uncertain quantity, but the people of California themselves have through initiative petitions and will have on the November ballot a proposition which will limit property tax levies. I think that the people themselves, through their own power, will decide what they'll do. And since we've been talking about the fact that we think the Legislature is the people's representative, I think that perhaps we should not close any options.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Mr. President, I agree with Mr. Martin. We shouldn't close any options, and really that's the whole theory of the Revenue and Finance section, that the options should not be closed. As we stated in the beginning, three basic taxes, which is property, income and excise taxes—this was somewhat to the same limitation that Mr. Kelleher just proposed, that there should be no sales tax enacted by the state, and that—put that in the Constitution. Now, I realize that local government is supported to a great extent by property taxes, but within the time of this Constitution it could be very well reversed, that local government can be very well and better supported by some other type of tax than property tax. By limiting this, then, we again invite some lawsuit as to what is meant by operation of state government. It means one thing to me, it means one thing to somebody else. Operation of state government could mean schools; the state is obligated to operate schools and furnish schools to the children. But more importantly, if we close off avenues of taxation, we really put the burden of taxes on the other avenues that we have. If we limit this to 2 mills and we assume that 2 mills does not go into education—to raise the $80 million that is now raised each year by property taxes for the support of schools—and assuming there is no local taxes for the support of schools, if we went the excise way, which is essentially the sales tax, we may need to have an 8 percent sales tax. If we went the income tax way and not the excise, we'd have to raise the income tax one and one-half times higher than what it is now to finance schools under Serrano versus Priest. And we do have other lawsuits pending, such as in welfare—which I'm not so sure is a—such a dominant public interest as education; but they say, "Well, it isn't going to apply here." But if anyone wants to read the case of Serrano versus Priest and how they discuss the different valuations in the taxing districts and how the State of California had a public foundation program to equalize between their schools, there is so much similarity between the California plan and the Montana plan of the foundation program; it's practically identical. And to say that we'll wait until it comes is not being very forward thinking about the thing, because you don't know what the people are going to do. You put it up to a vote, but there's nothing in the Constitution now that restricts the people from voting on whether or not they want to increase the sales tax or voting on whether or not they want to increase the income tax. What we are trying to do under our whole section is to relieve the thing from the burdens of the past so that the financing of the state can be solved in a much more logical manner, and to give [leave] the avenues open to solving those problems in the future. Thank you.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, I

rise to support Mr. Aasheim's amendment. I look at local government. It allows city-county revenue sharing. I've read the *Great Falls Tribune* over the last year and see how their city council says, "Well, now, if we could only get city-county revenue-sharing from the state, all of our problems would be solved." I feel that some place in this Constitution, we have to have some kind of a limit on something. We've gotten by for years with this 2-mill levy for state government. If we're going to in the future need it for our school systems, I agree with Mr. Aasheim that we will know in plenty of time so we can go ahead and put it to a vote of the people; and if that's necessary, then I'm sure it will be approved. But there are just too many loopholes that are left open. No matter where you read, whether it's from the President on down, everybody says that property taxes are too high, and yet we want to go out and leave the door wide open. As this state grows, there's going to be lots less people who are property-taxpayers and a lot more who are not; or if they are property-taxpayers, they are very small property-taxpayers. And I feel that if we don't get some kind of a limit someplace on some of this, we may not have too many people in years ahead that are going to own their property to pay the taxes on it; so I certainly support Mr. Aasheim's amendment.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: I forgot one point, Mr. President. Relative to property taxes on a statewide basis, if you do go to a—and you can't levy a property tax statewide—and you eliminate the property taxes that are now levied for schools, which is about, on the average, two-thirds of what property taxes we pay, who are going to be the biggest benefactors of that elimination? The only way now that we are taxing transportation companies and making them pay their fair tax is by a property tax. They don't pay any state license tax other than the $50 minimum, and the big beneficiaries of a two-thirds reduction in the tax, if we can't do it on a statewide basis, will be the railroads and the transportation companies and anybody else that pays a substantial portion of their taxes by property and do not pay it by income or license tax to the state.

CHAIRMAN GRAYBILL: Mr. Aasheim, do you—Mr. Mahoney, do you want to speak?

DELEGATE MAHONEY: Mr. Chairman, I rise in support of Mr. Aasheim's motion. Now, what you're doing when you leave it the way the committee has done, they won't ever have to vote on the University System again. They can just go out and put that on. Then, if we go out here now, at the present time, we have—now, we haven't got a statewide property tax for schools. They say that before you can share in the foundation program you must have this levy—15 mills, I believe it's for the grade schools and—no, it's 15 and 25. One is for high schools and one is for grade. This is before you can share. This is how it's being done. Now, if we go out here and take all the limits off like the committee has said, then you won't have to worry about that. We will come out with a statewide property tax of probably 40 mills, 50 mills; and it will be divided up, up here in the State Superintendants office or some other department. I'm not sure where it will be, because we may decide to create a new department, and this is when you lose your local control. Now, the people, I'll admit, are not voting for these levies when you get above this natural—this 40 mills. They're starting to question it. Some districts are having to go out three and four times to get this above what is necessary. This is a protest of the people that they don't like what's happening. Now, some of these districts don't have a bit of trouble. They just go right down and vote them, because those people in those districts have decided they like the way their school system is being run. Now, if we have this, we will find this automatically put on on property and we will then have the people with no say. I like to just let the people vote on some of these things, after—beyond a certain point, and I think it's good for them. If they don't like—and they've worried a number of times about the University System. Boy, I've seen them worry about it, the 6 mills. Now, if this happens, we'll have to worry about it. I'll admit the University System can go; and we've heard them complaining here about, the last day, about the Highway Department, and maybe then they won't have any complaints at all at the University System because they can't get at them. Now, this is what we're doing, and if we don't have some limit on here, this will be the keenest thing in the world to put it all back on property. Just watch it.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, apropos of the matter, I think that the trouble is the assessment system. Taking the railroads, for example, the railroad assessments in Montana in 1959 were a hundred and sixty-eight million, two hundred and seventy-six thousand, two—seven hundred and twenty-two [168,276,722]. This is for statewide railway assessments, not county. The 1968 assessment was one hundred twenty-four million, seven hundred and six thousand. [124,706,000] In the 10 years, the assessments shrunk $44 million. If we had that 44 million on the assessment books, and the same thing goes for other corporations, we wouldn't be bothered so much about our property tax yields.

CHAIRMAN GRAYBILL: Very well, Mr. Aasheim, do you want to close?

DELEGATE AASHEIM: I appreciate—

CHAIRMAN GRAYBILL: Wait a minute, wait a minute, Mr. Aasheim.
Mrs. Cain.

DELEGATE CAIN: May I ask Mr. Aasheim a question?

DELEGATE AASHEIM: You may.

DELEGATE CAIN: Mr. Aasheim, if Mr. Eskildsen's amendment of the other day had passed, would you have brought this?

DELEGATE AASHEIM: Well, now, I'll have to confess I didn't pay too much attention to that one. I was concerned about the majority report. I thought that was fine. I didn't really pay much attention to it, so I don't know what it would have done.

DELEGATE CAIN: Thank you, Mr. Aasheim. I think what we're doing here is considering our—reconsidering our action of the other day.

CHAIRMAN GRAYBILL: Mr. Aasheim, do you want to—
Oh, Mr. Skari.

DELEGATE SKARI: Mr. President, I think that maybe this is a rather an important vote, and I'm not too sure about it. It seems it's the central idea of the committee's recommendation here—the committee report is to prepare for a shift here from the local funding of the education to state funding because of the Serrano-Priest decision and these Texas decisions. Now—and I get—as I understand the report, that is what they intend here. Would Mr. McDonough yield to a question, please?

CHAIRMAN GRAYBILL: Mr. McDonough?

DELEGATE McDONOUGH: Yes, sir.

DELEGATE SKARI: Mr. McDonough, what about the—financing the construction of school buildings, now, under this Serrano-Priest decision? Does this decision just apply to the funding of the expenses of running the school[s]? What about the buildings and this sort of thing? Will we still vote locally if this applies in Montana?

DELEGATE McDONOUGH: Well, Serrano versus Priest opens up a whole bag of worms and cats or whatever else you might call it. Now, what happened there was, in Beverly Hills they had a taxable district whereby 3 mills might raise a hundred thousand dollars—and they have voted levies just like we do over and above the foundation program—they had another district where 3 mills might only raise six thousand dollars. In the Beverly Hills district, they spent fifteen hundred dollars per high school student; the other district could only afford, with three times as many mills to spend, only about five hundred dollars per high school student. Now, that's what they threw out and said was unconstitutional; it's logical, it is. I mean, you can take logic any other way you look at it, but that is on the equal protection clause of the Constitution and that's why it was thrown out. Now, if they go to the point that the facilities and buildings furnished for education also have to be somewhat equal, then you get into the same thing on buildings. Now, it's possible that—I think under buildings, and this is just a half-way thought about what they're talking about—it's possible that buildings could be financed in part by the district and financed in part by the state in order to equalize it so each child has the proper facilities in which to be educated. I don't know what Serrano versus Priest is going to do beyond the original point that we made. And I don't know, but it raises grave problems all up and down the line that the state is required to furnish an equal opportunity to education to each child in the state, and that's what it essentially says.

DELEGATE SKARI: Thank you, Mr. McDonough.
Mr. President.

CHAIRMAN GRAYBILL: Mr. Skari.

DELEGATE SKARI: I guess I would appreciate hearing from some of the other members on the committee on this, too. I would like to keep local control of schools, but I'd just like to hear more about it. I think we're going to vote here a little bit too quickly. Maybe some of them would comment on this.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. President. Mr. Skari, I would like to call your attention, and the attention of the other delegates, to the comments in the Education Article. Not to prolong this discussion, but on page 10 of that article, the majority report sets forth some of the reasons why this equalization process will have to take place. Just reading a few lines from that report: "Montana's school financing system is similar to those declared unconstitutional in the states where challenges have been made, and the same vast discrepancies in tax burdens and educational support exists in Montana as exists elsewhere." Then it quotes a recent study done last month in our Superintendent's office which shows that Montana's school district wealth per ANB varies as much as a ratio of 10,000 to 1; and this is the reason that a change has to come in the method of financing schools.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: I'd like to point out to the delegates that Mr. Aasheim's proposal does not close the door in any way. If there is a need to exceed the 2-mill levy, then the proposition can be placed upon the ballot and the people will have an opportunity to vote upon it. It will not require any amendment of the Constitution, merely a vote by the majority of the people. This is a matter that I think we should retain the control of our expenditures with the people, and this is an important enough matter that the electorate should have a say in it, should have a voice in it. And I, as I stated during recess and conversation, I don't think any prudent person signs a check in blank and hands it to somebody to do with as they see—please—as they may so please to do. I like to be a little bit prudent about these things, and I don't think it's going to hamstring the operation of government or the school foundation program or anything else that the federal courts might order us to do if we can say to that court, "Our Constitution does not allow us to do it until the people pass upon it"; and that may be a very important safeguard to all of us in Montana. Thank you.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, first I would like to point out to Mrs. Cain that Mr. Aasheim did not support Mr. Eskildsen yesterday.

DELEGATE CAIN: I know.

DELEGATE GYSLER: Oh, okay. And I'd also like to say this, that if there was something written in with—along with this 2 mill that said that property tax could—above that could only be used for the education system, I would certainly go along with it on that basis. But I want to remind everybody that when you leave off all restrictions, you are not just saying that we are leaving the door open to school financing.

CHAIRMAN GRAYBILL: Mr. Joyce was next.

DELEGATE JOYCE: Mr. Chairman, it seems to me that this proposal has the same merit as Delegate Kelleher's. We just gave a blank check to the Legislature to put on a 20-percent sales tax. They aren't going to do that. I don't like property taxes any more than anyone else, but it seems to me that what we've done in this revenue thing is we've opened up the avenue so that the people who come after us can legitimately finance the state as prudence dictates from time to time. And I don't believe in putting it—10-mill state property tax levy on any more than anybody else, and nobody is saying that they will. All we are doing is, we're leaving it to future generations to solve the problems as they arise; and the whole purpose of the Constitutional Convention was to free the Legislature so they could meet the problems as they arise. And I might say further, it seems to me the arbitrary restrictions we wrote into the Montana Constitution are the reason that the government went to Washington. The states had themselves—their hands tied so they couldn't meet them on the local level, and so the social forces just by-passed the state and went to Washington. And I think this has the same merit as Delegate Kelleher's proposition that we'll never have a sales tax, and I'm again willing to free the Constitution so that the problems that arise in the future can be met by reasonable men in the future.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President, I rise to support Mr. Aasheim's motion. Probably this will do him more harm than good, but—(Laughter) I think we have placed a lot of emphasis all through this Convention on the people's right to vote. We've talked about giving the young people a right to vote. Don't you think they should have the right to determine what indebtedness they will have to pay off? I can look around here in this Convention and I see several people, like myself—that you can put on quite an indebtedness and we won't be around to pay it off, but these young people will. And I think this is something that we should think about. We're trying to provide a little protection for the people, and they can come in here and vote these things in if the need arises. We are all talking about the California case, the Texas case, and so on—about the schools. It hasn't arrived here yet. It's not here in Montana, and when it does come, if it ever does, which it probably will, we'll have time enough to decide—the people will—how they want to finance the school system. I support Mr. Aasheim. Let's give the people a little right to vote.

CHAIRMAN GRAYBILL: Mrs. Mansfield.

DELEGATE MANSFIELD: Mr. President, as the years have gone by and, living on a ranch, I've heard remarks made by neighbors that this is one of the fairest tax that was ever levied on the people—2 mills every year and it brings in a million and three-quarters dollars and it hurts no one; and then the people, if they have to go beyond that, can vote. Thank you.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, fellow delegates, I rise in opposition. As I see it, the 2 mills could seriously restrict the state government and, in fact, the Legislature. If the case does come, and it will, it could be taken completely out of the people's hands, completely out of the Legislators' hands, and it could be put in the court. The court would then dictate to the Legislature and to the people of the State of Montana how it would be funded and how the funds would be derived and divided. I think you overwhelmingly supported the majority position when it was up before, and I would request that you do the same now. Thank you.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman, we're talking here in a vein as if we are precluding the people from voting. Mr. Wilson said 18-year-olds would not have a chance to vote. Of course they'll have a chance to vote on a statewide property tax levy, just as they do on local levies. This doesn't preclude people from voting on the levies; the fact that they're statewide or whether they're local would not preclude anyone from voting on them.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Mr. Chairman, I was just going to say it's rather arbitrary that we would have the people vote on a property tax and not on the income tax or license tax or any of the other taxes and also that if we followed the logic of Mr. Aasheim's proposal to perhaps an inevitable conclusion, we might have the people vote on every appropriation and every budget that the Legislature determines.

CHAIRMAN GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Mr. Aasheim, could I ask you a question, please?

DELEGATE AASHEIM: (Inaudible)

DELEGATE BABCOCK: Mr. Aasheim, could I ask you a question, please?

DELEGATE AASHEIM: Yes, ma'am.

DELEGATE BABCOCK: Does this happen to take the place of the 2-mill tax that the Governor can impose in the case of an emergency?

DELEGATE AASHEIM: It's the same.

DELEGATE BABCOCK: It's the same thing.

CHAIRMAN GRAYBILL: Is there any more discussion?

(No response)

CHAIRMAN GRAYBILL: Mr. Aasheim, do you want to close?

DELEGATE AASHEIM: I surely appreciate your restraint in limiting the discussion, and I have to answer a few comments. Mrs. Cain, now, I have read Mr. Eskildsen's proposal and it wouldn't have made any difference, really, because his was in a different area—on the State Board of Equalization and school—and local County Commissioners, so it would not make any difference. Now then, I'm going to take these last comments first. Now, Mr. Furlong says the court might overrule us in the Constitution. Is the court above the Constitution? Now and then we had the comment that we don't ask the people to vote on sales taxes. Yes we do, but not income tax. Now, I'll tell you, you let the local governments levy sales taxes and income taxes and I'll withdraw my motion. But as I reminded you awhile ago, the local governments are restricted to property tax, so that's why I'm asking a restriction on the state level. I can't share Mr. Wilson's pessimism. I'm optimistic, and I'm glad to have your support, Mr. Wilson. You'll win one of these times. Now, this comment was made about one school district having so much more wealth than another. It is true; there is this discrepancy; there is discrepancies all over the place. I might drive a Volkswagen and Mr. Wilson might drive a Continental. I'm not trying to equalize that, but we are trying to equalize it for school purposes. We're trying desperately, but it's pretty difficult. But we are doing it to quite an extent, and the State of Montana is now putting out about $30 million for equalization purposes through the income tax and other sources of revenue. This—the local people are paying property tax. That's where the schools are now getting their money—most of their money; we know that. So we do have the use of the property tax for school purposes. Now, you question again my questioning the integrity of the Legislature. I say the Legislature is made up of people, and I know how they are—they succumb to pressures because they are human. And they're going to say, "Well, sure, if we can put on 2 mills this year and then we need about $2 million, so we'll put on another mill next year; they won't hurt anything, they won't notice it." So next year another mill and another mill. There's no limit. The only ones who cry are the people, and they cry in vain sometimes, as long as there are no constitutional limitations. Now, Mr. Martin, you said, "Wait and let the people do this." Can you imagine—someone said that we should have a choice and let—there isn't enough tax on property now. Heavens above, aren't we living—aren't we realizing that property is bearing about all the load it can? And now we want to give it some more if we possibly can? Now, Mr. Martin, did it ever occur to you that people get so sick of property taxes that they might pass an initiative and say there shall be a 10-mill restriction? And then you've got it tied in, then you've got it tied down; now you haven't. You go to the people and say, "We need a few dollars here, so will you vote it for us?" So don't forget that little thing. Thank you.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Aasheim's proposed new Section 16 which has the effect of putting into the Constitution the 2-mill levy. I don't think I need to read it. I take it you want a roll call vote. So many as shall be in favor of Mr. Aasheim's Section 16, putting the 2-mill levy into the Constitution, vote Aye; and so many as opposed, vote No.

DELEGATE BRAZIER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Brazier.

DELEGATE BRAZIER: I rise to explain my failure to vote, and it arises because under our rules we do not permit pairing in the Committee of the Whole. Your secretary, Mrs. Bowman, had to catch an airplane and we got to comparing notes and as a courtesy, I have withheld my vote.

CHAIRMAN GRAYBILL: Very well, have all the delegates voted?
(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?
(No response)

CHAIRMAN GRAYBILL: Take the vote, please.

Aasheim	Aye
Anderson, J.	Aye
Anderson, O.	Aye
Arbanas	Excused
Arness	Absent
Aronow	Aye
Artz	Aye
Ask	Absent
Babcock	Aye
Barnard	Aye
Bates	Aye
Belcher	Excused
Berg	Nay
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Absent
Brazier	Absent
Brown	Nay
Bugbee	Nay
Burkhardt	Nay
Cain	Nay
Campbell	Nay
Cate	Absent
Champoux	Absent
Choate	Aye
Conover	Absent
Cross	Aye
Dahood	Nay
Davis	Aye

Delaney	Aye
Driscoll	Nay
Drum	Absent
Eck	Nay
Erdmann	Aye
Eskildsen	Excused
Etchart	Aye
Felt	Excused
Foster	Nay
Furlong	Nay
Garlington	Nay
Gysler	Aye
Habedank	Nay
Hanson, R.S.	Aye
Hanson, R.	Nay
Harbaugh	Nay
Harlow	Nay
Harper	Nay
Harrington	Absent
Heliker	Nay
Holland	Excused
Jacobsen	Nay
James	Nay
Johnson	Aye
Joyce	Nay
Kamhoot	Aye
Kelleher	Nay
Leuthold	Aye
Loendorf	Nay
Lorello	Absent
Mahoney	Aye
Mansfield	Aye
Martin	Nay
McCarvel	Nay
McDonough	Nay
McKeon	Nay
McNeil	Aye
Melvin	Nay
Monroe	Nay
Murray	Nay
Noble	Aye
Nutting	Aye
Payne	Absent
Pemberton	Aye
Rebal	Aye
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	Nay
Rygg	Nay
Scanlin	Nay
Schiltz	Absent
Siderius	Nay
Simon	Aye
Skari	Nay
Sparks	Absent
Speer	Nay
Studer	Absent
Sullivan	Nay
Swanberg	Aye
Toole	Nay
Van Buskirk	Absent
Vermillion	Aye
Wagner	Aye
Ward	Aye
Warden	Nay
Wilson	Aye
Woodmansey	Nay
Mr. Chairman	Nay

CLERK SMITH: Mr. Chairman, 32 voting Aye, 48 voting No.

CHAIRMAN GRAYBILL: 48 having voted No and only 32 voting Aye, Mr. Aasheim's motion is defeated. Mr. McDonough, would you tell me again the name of the California case? I just need to write it down here. Is it something versus Serranto?

DELEGATE McDONOUGH: Serrano, S-E-R-R-A-N-O versus Priest—Priest, the same as a clergyman. However, it was an Irishman that was one of the state officials.

CHAIRMAN GRAYBILL: Very well. All right, there are no other new sections that I know of.

Mr. Johnson, you have a motion to reconsider. Will you please state your motion, or would you like us to read your motion?

DELEGATE JOHNSON: You may read it.

CHAIRMAN GRAYBILL: All right, will the clerk please read Mr. Johnson's motion to reconsider.

CLERK SMITH: "Mr. Chairman. I move to reconsider Section 5's adoption in order to delete the sentence of the Revenue and Finance Committee proposal on page 12, lines 25 and 26: 'Certain classes of property may be exempt from taxation'."

CHAIRMAN GRAYBILL: All right, Mr. Johnson, your motion is in error; it's page 11. On page 11, lines 25 and 26, you'll find the sentence "Certain classes of property may be exempt from taxation." Mr. Johnson, do you want to explain, briefly, your motion?

DELEGATE JOHNSON: Yes, Mr. Chairman. Thank you. Having voted on the prevailing side and then studying this some more last night, I've become very concerned over this particular sentence—"Certain classes of property may be exempt from taxation." I'm afraid that if I—I must have been lulled yesterday to vote for this, because this opens the door, I think—well, for instance, the Big Sky complex, resorts of any kind in Montana, any special class of property that might win an exemption by lobbying or other manner. And I can't see that this does anything in here except leave the door open for that type. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: All right, Mr. Johnson wants to reconsider—having voted on the prevailing side, wants to reconsider Section 5 for the purpose of taking out the sentence on lines 25 and 26. Is there discussion of the motion to reconsider? And please be to the point.

Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman. Well, I would like to see the committee reconsider this, because if this were reconsidered and that phrase was taken out, I would like to see us adopt a—some language that would exempt household goods and furniture, wearing apparel and other personal property and also solvent credits. And in our Legislative Council subcommittee study, which Mr. Berthelson referred to earlier in the debate, our study indicated that these two types of property should be exempt from taxation. The solvent credits we found were practically impossible to administer property tax on and—am I getting off the subject here?

CHAIRMAN GRAYBILL: Well, I just wanted you to stay on the subject of reconsideration. You may tell them what you're going to do, but I don't want to get a big debate going until we've decided whether to reconsider.

DELEGATE ETCHART: Yes. Well, this is—if we could reconsider it, this would make a change which the Legislative Council has concluded in the past should be done. Thank you.

CHAIRMAN GRAYBILL: Is there other discussion of the motion to reconsider?

(No response)

CHAIRMAN GRAYBILL: Very well, you have the motion before you, the motion of Mr. Johnson that this committee reconsider its action on Section 5, page 11, for the purpose of considering the sentence on lines 25 and 26. Anybody want a roll call?

UNIDENTIFIED DELEGATE: Yes.

CHAIRMAN GRAYBILL: All right, the vote will be by roll call. So many as are in favor of reconsidering, vote Aye; so many as are opposed, vote No. Have all the delegates voted?

UNIDENTIFIED DELEGATE: No.

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the ballot.

Aasheim	Aye
Anderson, J.	Aye
Anderson, O.	Nay
Arbanas	Excused
Arness	Absent
Aronow	Aye
Artz	Aye
Ask	Absent
Babcock	Aye
Barnard	Aye
Bates	Aye
Belcher	Excused
Berg	Nay
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Absent
Brazier	Absent
Brown	Nay
Bugbee	Nay
Burkhardt	Nay
Cain	Nay
Campbell	Nay
Cate	Absent
Champoux	Absent
Choate	Aye
Conover	Absent
Cross	Aye
Dahood	Aye
Davis	Aye
Delaney	Absent
Driscoll	Nay
Drum	Absent
Eck	Nay
Erdmann	Absent

Eskildsen	Excused
Etchart	Aye
Felt	Excused
Foster	Nay
Furlong	Nay
Garlington	Aye
Gysler	Nay
Habedank	Aye
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Nay
Harlow	Nay
Harper	Nay
Harrington	Absent
Heliker	Nay
Holland	Excused
Jacobsen	Aye
James	Aye
Johnson	Aye
Joyce	Nay
Kamhoot	Aye
Kelleher	Nay
Leuthold	Aye
Loendorf	Nay
Lorello	Absent
Mahoney	Aye
Mansfield	Absent
Martin	Nay
McCarvel	Nay
McDonough	Nay
McKeon	Nay
McNeil	Nay
Melvin	Nay
Monroe	Nay
Murray	Nay
Noble	Nay
Nutting	Aye
Payne	Absent
Pemberton	Aye
Rebal	Aye
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	Nay
Rygg	Nay
Scanlin	Nay
Schiltz	Absent
Siderius	Nay
Simon	Nay
Skari	Aye
Sparks	Absent
Speer	Nay
Studer	Absent
Sullivan	Aye
Swanberg	Aye
Toole	Nay
Van Buskirk	Absent
Vermillion	Nay
Wagner	Nay
Ward	Nay
Warden	Nay
Wilson	Aye
Woodmansey	Nay
Mr. President	Nay

CLERK SMITH: Mr. Chairman, 29 voting Aye, 48 voting No.

CHAIRMAN GRAYBILL: 48 delegates having voted No and 29 voting Aye, the motion to reconsider fails.

Mr. Loendorf, do I understand you want to withdraw your motion to reconsider?

DELEGATE LOENDORF: Yes, Mr. President.

CHAIRMAN GRAYBILL: Very well, are there other motions to reconsider matters contained in the Revenue and Finance proposal?

(No response)

CHAIRMAN GRAYBILL: If not, I think the committee is ready to rise and report on the Revenue and Finance proposal.

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, before doing so, I would move that the committee pass consideration of all other business on General Orders for this sitting.

CHAIRMAN GRAYBILL: Very well, that means we're going to pass other business, including the Legislative Style and Drafting, on till Tuesday. All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move that the committee rise and finally report.

CHAIRMAN GRAYBILL: The motion is that the committee rise and finally report. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

(President Graybill presiding over Convention)

PRESIDENT GRAYBILL: The Ayes have it. Now, while the report is being considered, I'd like you to find on your desks Resolution Number 11, which we will take up in the Convention after we have acted on the committee report. Will the Convention be in order. Will the clerk read the title of the committee report.

CLERK SMITH: "March 4, 1972. Mr. President. We, your Committee of the Whole, having had under consideration Report Number 7 of the Committee on Revenue and Finance, move that the committee rise and report."

PRESIDENT GRAYBILL: "Signed: Graybill."

CLERK SMITH: "Signed: Graybill, Chairman."

PRESIDENT GRAYBILL: Very well, does anyone wish the Committee of the Whole report read in its entirety?

DELEGATES: No.

PRESIDENT GRAYBILL: Very well.
Mr. Murray.

DELEGATE MURRAY: Mr. President, I move that we adopt the Committee of the Whole report and refer Proposal Number 7 to the Committee on Style and Drafting.

PRESIDENT GRAYBILL: You've heard Mr. Murray's motion to adopt the Committee of the Whole report and refer the Revenue and Finance proposal to Style and Drafting. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.
(No response)

PRESIDENT GRAYBILL: The Ayes have it, and so ordered.
Mr. Murray.

DELEGATE MURRAY: Mr. President, I move we revert to Order of Business Number 7.

PRESIDENT GRAYBILL: Without objection, we'll revert to Order of Business Number 7, Resolutions.
Mr. Murray.

DELEGATE MURRAY: Mr. President, the Convention has before it Resolution Number 11, which is a resolution introduced this day by the Committee on Rules. When we previously took up the matter of the election to be held in conjunction with the June 6th primary election, we were asked by the Convention to detail certain information relative to this election. We have considered this matter in detail, and the resolution contains our recommendations. Because of the condition of the statutes of Montana with respect to the designation "special election", and that subject being, it appears, primarily directed toward the filing of a vacancy in office or an election for money, it occurs to us that we must ask for a separate election or an election separate from the state primary election but which would be held simultaneously on the same day, June 6th, 1974—1972, for the purpose of ratifying or rejecting the proposed Constitution. And our resolution I believe to be self-explanatory. I might note that at the top of page 2, in line 1, the committee has suggested an amendment where it says, "the election notice and direct each election judge". That should be changed to County Clerk and Recorder, because it would be nearly impossible to have each election judge post the notice that we require.

PRESIDENT GRAYBILL: Very well, we'll propose an amendment on line 1 of page 2 to strike the words "election judge" and put in the word "Clerk and Recorder". All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.
(No response)

PRESIDENT GRAYBILL: So ordered.

DELEGATE MURRAY: Now the other matter to be considered is the form of the—

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Yes?

PRESIDENT GRAYBILL: I think you should read this, or let us read it. I want everybody to understand it.

DELEGATE MURRAY: I'll read it then.

PRESIDENT GRAYBILL: Maybe you

could read it and comment as you go along.

DELEGATE MURRAY: Okay. "In accordance with Section 17 of the Constitutional Convention Enabling Act"—and that's the Enabling Act that created this Convention—"Chapter 296, Laws of 1971 as amended by Chapter 1, Extraordinary Session, Laws of 1971, the Convention hereby resolves that: Section 1. An election separate from the state primary election shall be held simultaneously on June 6, 1972, for the purpose of ratifying or rejecting the proposed Constitution"—and I have already discussed that. "The question of adopting the proposed Constitution and related questions, if any there be, on the ballot"—and I submit there will be one because of our action relative to bicameralism and unicameralism—"shall be submitted to the people on a separate ballot which shall be certified by the Secretary of State in the form to be adopted by the Constitutional Convention." We will finally, at the end of this Convention, determine the form of the ballot. We will certify that to the Secretary of State, and that ballot will be printed and distributed. It will be a separate paper ballot. It will not be in connection with a machine or the vote-o-matic card-punching devices that some of us have in our counties, because we do not want to chance in any way the possibility that this might be considered as part of the regular primary election. "Section 3. The County Commissioners in each county shall furnish separate pollbooks, precinct registers, tally sheets and any other supplies necessary for holding a separate election." In doing so, we think that we will further instruct the judges in all of our one thousand-some precincts to ask people if they desire to vote on the Constitutional issue; and if they desire to do so, we will have the necessary supplies for them to sign a separate pollbook. They will then be considered as voting in this election. If they decide to pass the question, they will not sign the book and they will not pick up a ballot. In this manner, we think we will enable ourselves to better overcome the prospect of facing the language of our existing Constitution, which says that we must have a majority of the voters who are participating in the election. "4. The votes cast for the ratification or rejection and related questions shall be tabulated, returned and canvassed separately from the votes cast in the primary election but in the same places, in the same manner, and by the same Election Judges, Clerks and Canvassers." This further goes along with our thinking that we would keep our election separate in every manner from the primary election. "5. The Secretary of State shall prescribe the form of the election notice and direct each Clerk and Recorder to post the notice in public places in their precincts at least 20 days prior to the election and direct each Board of County Commissioners to publish notice of the election in a newspaper of general circulation in the county once at least 10 days before the election." That's self-explanatory and in accordance with existing law. "Section 6. The election laws of Montana shall apply in all other respects to the constitutional ratification or rejection election, including notice of close of registration." And that's to cover the law—the Enabling Act provisions relative to that and to make sure that we cover all of the election problems that might arise. "Section 2, subsection 1. The Secretary of State is hereby requested to requisition the Purchasing Division of the Department of Administration to call for bids for the printing of the proposed Constitution with comments and report to the people as required by subsections 4 and 5 of Section 17 of the Constitutional Convention Enabling Act, which shall be printed in the form prescribed by the Convention." And, Section 2, "There is attached to this resolution a requisition approved by the Constitutional Convention for use by the Secretary of State in requesting the call for bids." Now, that is self-explanatory, and when we discussed this matter previously, I mentioned to you that there was a problem of timing. And in order to get this matter on the ballot on June 6th, we must call for bids, because there will not be time to complete our work and then call for bids; and the requisition is for that purpose. You will notice that there is a date left blank in the second paragraph of the typewritten material on the requisition: "Proofed printers copy to be furnished to successful bidder no later than"—and there is a blank. When the requisition was printed a few days ago, it contained a date, and we left it out for this purpose, because it is necessary that I go down to the Department and establish a new date. The date that they used was not proper for our purpose and was too early, and therefore we left it blank; and I must ask your indulgence to be able to go down and take care of that matter. Now, what we're talking about in this requisition is the document that many of you have seen, and I have it in my hand and show it to you now. This is the Illinois voter information pamphlet. It is tabloid size, which is half the size of a regular newspaper. It is printed on newsprint. We will use white newsprint. We envision three colors on the two pages, the front and back, for purposes of dressing it up a little. We think that we will have the money for that purpose. Inside this document is contained the report to the people, starting on the first page, and then you will see, inside, the sample ballot that many of you have already inspected. Then you will notice that the Constitution is set forth inside in two colors and in two types of print. The two colors designate the section of the Constitution—or one color designates the section of the Constitution, the other color designates the explanation of this Convention as to that section, whether it would be identical with the present Constitution in Montana or what the change might be. And the two colors have been used in at least Illinois and Arkansas, as we have been able to discover from our examination. We feel that we will be able to complete all our printing and work within the 24 pages used by the State of Illinois, and I think the same number of pages, or even fewer—or lesser, were used by Arkansas. In Illinois, I might note to you, that there were a couple of pages which are filled, one, with the names of the 58 delegates—or a hundred and some delegates who participated in the Constitutional Convention and a letter to the public by the Secretary of State. We envision that we would use these for better purposes unless the space became available and we could use them for such purposes. We feel that the document used in Illinois and Arkansas is such that it would be to our advantage to use the same thing. There is no question but what it is cheaper to use this type of document than it is to print a book with all that might be needed in it, and certainly it can be printed with much greater dispatch. We envision, and the bid—the requisition calls for the printer to deliver the requisite number of copies as are on Appendix II to the various Clerk and Recorders—directly to the various Clerk and Recorders. So we do not run into the problem of having delivery to the office of the Secretary of State and then the burden of having that office make the necessary mailings or deliveries or shipments to the various Clerk and Recorders in Montana. Well, briefly, that covers the intent and purpose of the resolution. I would like very much for you to give it consideration at this time and if possible to adopt it, because I would like to take the matter up with the Purchasing Department and the office of the Secretary of State on Monday morning; and if we do not take care of it now, it would be sometime Tuesday or perhaps Wednesday before we could do it. And, Mr. President, I move that we adopt Resolution Number 11.

PRESIDENT GRAYBILL: Very well, you've heard the motion. First of all, the Chair would like to make a comment, and then we'll have questions. Mr. Murray, I think you should point out to the body that the twenty-four thousand dollars referred to on the requisition is Account Number 110100, Appropriation Number 12255, and that is not our appropriation. That's an additional forty-one thousand dollar appropriation that the Secretary of State has, and he claims that the difference between 24 and 41 are necessary for him to set up the election. Isn't that correct?

DELEGATE MURRAY: Yes, Mr. President.

PRESIDENT GRAYBILL: So this is not our money shown there. Now, my point, Mr. Murray, and in bringing this up—either by letter accompanying this, or perhaps we should amend the requisition, and I don't think that need bother the resolution. I think it should be made clear to bidders that this may not be all the money we have available, that this is one of the sources—one of the projects for which we have applied for the federal funding and which we might also have other funds of our own available. We certainly want to do the proper job on this pamphlet, and we are simply trying to get bid prices. But the twenty-four thousand is from the Secretary of State's appropriation and not our four hundred and ninety-nine thousand dollar appropriation. Am I correct?

DELEGATE MURRAY: Yes, you are right, Mr. President. May I also say that the Legislature, in appropriating the forty-one thousand dollars within which the twenty-four thousand dollars was included to the office of the Secretary of State, envisioned one of those little 6 by 9 pamphlets that you received when you were considering the question of voting for the delegates to this Constitutional Convention or for the Convention itself; and we felt that that was not a satisfactory document and that we should go better than that. Now, I might also say that Illinois and Arkansas, in addition to the voter information pamphlet such as this, printed a book. But we do not think that we, by any means, have the funds to print an additional document and that by dressing this one up with colors—and this has been handed to many people and used; it's still in pretty good condition. It's been in my file for 30 days anyway, and it's been through Style and the President and the officers of this Convention. It seems to hold up pretty well, and I think will be a pretty good job—do a pretty good job for us.

PRESIDENT GRAYBILL: Now, is there question or discussion from the body?

Mr. Gysler.

DELEGATE GYSLER: Would Mr. Murray yield to a question?

DELEGATE MURRAY: Yes, sir.

DELEGATE GYSLER: Mr. Murray, on your requisition—"bid security in the amount of 5 percent of the total bid is requested"—shouldn't that "requested" be "required"?

PRESIDENT GRAYBILL: Where was that, Mr. Gysler?

DELEGATE GYSLER: "Requisition"—down—there's a single line about halfway down through it.

DELEGATE MURRAY: Well, I didn't cut the requisition. That's cut from the Department of Purchasing, and I presume that's the language that they use. We can change it to "required" if you want to, but it's their requisition; it isn't ours. That's on for illustrative purposes only, really.

DELEGATE GYSLER: It just seemed to me to be good business.

DELEGATE MURRAY: I'm sure they will require it, although it says "requested".

PRESIDENT GRAYBILL: Are there other questions about the resolution or the requisition?

Mr. Monroe.

DELEGATE MONROE: Mr. President, in the very first paragraph there; now this doesn't include the mailing costs, am I correct?

DELEGATE MURRAY: This includes the shipping cost to the County Clerk and Recorders but does not include the mailing cost of mailing this document by the County Clerk and Recorder, which is a county expense, to the individual voters.

PRESIDENT GRAYBILL: In other words, the mailing cost is not our cost, Mr. Monroe. It's the County Clerk and Recorder's cost.

DELEGATE MONROE: Okay, another question. The balance of the money—of the forty-one thousand dollars—that's to pay Election Clerks and Judges and so forth?

DELEGATE MURRAY: The balance of that money is for use by the office of the Secretary of State to do what it has to do to conduct this election.

PRESIDENT GRAYBILL: Are there other questions of Mr. Murray? (No response) Is there other discussion about Resolution Number 11?

(No response)

PRESIDENT GRAYBILL: Very well, members of the Convention, you have before you Mr. Murray, the Chairman of the Rules Committee's motion that Resolution Number 11 be adopted by this Convention. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

(No response)

PRESIDENT GRAYBILL: The Ayes have it, and so ordered. Very well, I think there are no other motions or resolutions.

Mr. Murray.

DELEGATE MURRAY: Mr. President, I move we advance to Order of Business Number 11.

PRESIDENT GRAYBILL: Without objection, we'll advance to Order of Business Number 11.

Mr. Martin.

DELEGATE MARTIN: On behalf of the Public Information Committee, we would just like to acknowledge and express our appreciation to the Governor of Girls' State, Elaine Koyama, who this past 2 weeks has stayed out of school and given yeoman's service in conducting tours; and I'd like to present her at this time. She's going back to Hardin to finish high school.

PRESIDENT GRAYBILL: Miss Koyama. (Applause)

PRESIDENT GRAYBILL: Mr. Harper, did your daughter get away?

DELEGATE HARPER: (Inaudible)

PRESIDENT GRAYBILL: Well, we missed Miss Montana—or at least we had her but we didn't get her introduced. I intended to, and I guess—if she gets back, Mr. Harper, point it out again. I'm sorry. I get engrossed in these interesting debates, and things just—(Laughter)—get away from me. Are there other announcements? Mr. Blaylock.

DELEGATE BLAYLOCK: Bill of Rights Committee meeting, Tuesday morning, 8 o'clock.

PRESIDENT GRAYBILL: The Chair—Mrs. Warden.

DELEGATE WARDEN: Gee, I guess I'm way back here too far. The Public Information Committee, in the Rules Committee at 8 o'clock Tuesday morning.

PRESIDENT GRAYBILL: In the Rules Committee room at 8 o'clock Tuesday morning. Mr. Murray, wait a minute. The Chair wishes to announce that on Tuesday morning we will take up the Legislative Style and Drafting proposal and we'll take up the Executive Style and Drafting proposal, and we'll be prepared to start on Bill of Rights after we've finished those two Style and Drafting proposals. So please come prepared on them. The Executive one has been given to you and will have complied with the 48-hour rule by Tuesday morning. Are there other announcements? (No response) Mr. Murray, have you your form?

DELEGATE MURRAY: I have. Mr. President, I move, pursuant to the general powers vested in the Montana Constitutional Convention and in accordance with the provisions of Section 7, subsection 6, of the Enabling Act, Chapter 296, Laws of 1971, that the Montana Constitutional Convention recess temporarily until 9:00 a.m. on Tuesday, March 7, 1972.

PRESIDENT GRAYBILL: Very well, you have heard the motion to recess this Convention until Tuesday, March 7th at 9:00 a.m. All in favor say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

(Convention recessed at 6:00 p.m.)

March 7, 1972
9:10 a.m.

Thirty-Ninth Day

Convention Hall
Helena, Montana

PRESIDENT GRAYBILL: If you'll all arise, Mr. Arness will lead us in the Pledge of Allegiance this morning.

DELEGATE ARNESS: I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one nation, under God, indivisible, with liberty and justice for all.

PRESIDENT GRAYBILL: This morning, Veronica Sullivan will lead us in our invocation.

DELEGATE SULLIVAN: Almighty God, we thank You for the privilege of being here. Give us the insight to make this the best possible document for our and succeeding generations of Montanans. Help us to help each other and always remember to be kind and thoughtful. Amen.

PRESIDENT GRAYBILL: We'll take attendance this morning on the voting machines. All present, vote Aye.

CLERK HANSON: Mr. President, may Delegates Arbanas, Belcher, Bugbee, Champoux, Eskildsen and—be excused please?

PRESIDENT GRAYBILL: Yes.

CLERK HANSON: Delegate Delaney, Delegate Drum, Delegate Furlong, Delegate Nutting, Delegate Monroe, Delegate Delaney, Delegate Drum, Delegate Furlong, Delegate Nutting. Delegate Delaney, Delegate Drum, Delegate Furlong, Delegate Nutting, Delegate Romney.

PRESIDENT GRAYBILL: Very well, please take the ballot.

Aasheim	Present
Anderson, J.	Present
Anderson, O.	Present
Arbanas	Absent
Arness	Present
Aronow	Present
Artz	Present
Ask	Present
Babcock	Present
Barnard	Present
Bates	Present
Belcher	Absent
Berg	Present
Berthelson	Present
Blaylock	Present
Blend	Present
Bowman	Present
Brazier	Present
Brown	Present
Bugbee	Absent
Burkhardt	Present
Cain	Present
Campbell	Present
Cate	Present
Champoux	Absent
Choate	Present
Conover	Present
Cross	Present
Dahood	Present
Davis	Present
Delaney	Absent
Driscoll	Present
Drum	Absent
Eck	Present
Erdmann	Present
Eskildsen	Absent
Etchart	Present
Felt	Present
Foster	Present
Furlong	Absent
Garlington	Present
Graybill	Present
Gysler	Present
Habedank	Present
Hanson, R.S.	Present
Hanson, R.	Present
Harbaugh	Present
Harlow	Present
Harper	Present
Harrington	Present
Heliker	Present
Holland	Present
Jacobsen	Present
James	Present
Johnson	Present
Joyce	Present
Kamhoot	Present
Kelleher	Present
Leuthold	Present
Loendorf	Present
Lorello	Present
Mahoney	Present
Mansfield	Present
Martin	Present
McCarvel	Present
McDonough	Present

McKeon	Present
McNeil	Present
Melvin	Present
Monroe	Present
Murray	Present
Noble	Present
Nutting	Absent
Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins	Present
Romney	Absent
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present

PRESIDENT GRAYBILL: Mr. Furlong is present.

CLERK HANSON: Mr. Furlong is present. Mr. President, 91 delegates present, 5 excused and 4 absent.

PRESIDENT GRAYBILL: Very well. A quorum is present. Order of Business Number 1, Reports of Standing Committees.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 2, Reports of Select Committees.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 3, Communications.

CLERK HANSON: "Helena, Montana; March 7, 1972. Honorable Leo Graybill, Jr.; President, Montana Constitutional Convention; Capitol, Helena, Montana. Dear Mr. President: In accordance with the provisions of Section 15(2), Extraordinary Senate Bill Number 6, Chapter Extraordinary Number 1, Laws of Montana 1971, the licenses of the following lobbyists have been suspended as of March 7, 1972, for failure to file statements of expense within the period specified by law: 32-72 Gene Tuma; 58-72 Roy G. Crosby; 69-72 Maurice Mulkahey; 84-72 Joe Curtis. The suspension of Gerald McCurdy reported to you on February 22, 1972, is still in effect. Sincerely yours, Frank Murray, Secretary of State."

PRESIDENT GRAYBILL: Very well. We have another matter on communications this morning. Mrs. Warden is here, who has a presentation to make to the Convention.

Mrs. Warden.

DELEGATE WARDEN: I come to you this morning with a special scroll from the Great Falls, Montana Advertising Club, proclaiming the Charles M. Russell month. The proclamation was signed by Governor Anderson and also by Mayor McLaughlin of the City of Great Falls. "Whereas Charles Marion Russell, world-famous cowboy artist, belongs to all Montanans and no other man has brought more recognition to the State of Montana and to the field of western art than Charles M. Russell, the Montana Historical Society has dedicated most of its gallery's face to the display of Russell art; and that the Charles M. Russell auction of original western art, held each March in Great Falls, home of the C. M. Russell Gallery and the original studio, is becoming the leading auction of its kind in the United States; and whereas March 19th marks the birthday of Charles M. Russell; now I, therefore, Forrest Anderson, Governor of the State of Montana, and John J. McLaughlin, Mayor of the City of Great Falls, do hereby join together in proclaiming March, 1972, the second statewide Charles M. Russell month in Montana and encourage all areas of the state to honor this celebrated Montanan." I come to you this morning to present the scroll. One will be given to each of you, and I will give one to Mr. Graybill. It is altogether fitting and proper that he receive this scroll beneath one of the finest pictures that Charlie Russell ever did. I take great pleasure in doing this, and I know that your inspiration as you're sitting here, your deliberations can also come from that beautiful picture behind us.

PRESIDENT GRAYBILL: I wanted—

they wanted to take a picture, but I do want to thank Mrs. Warden and the Advertising Club on behalf of the Convention. And I am sure that all of us here have daily received inspiration from being able to view Charlie Russell's marvelous picture behind me. The only real disadvantage to being President that I've found so far is that I don't get to see the picture very much. Thank you very much, Mrs. Warden. We appreciate that, and I'm sure each of the delegates will appreciate their copy. Now, we also have one other honor this morning. We have with us in the chamber, Miss Indian America. Would you please come forward? Good. Miss Indian America is a junior at Brigham Young University, majoring in sociology. And she's taken a year off—come right on up here with me—she's taken a year off to perform her duties as Miss Indian America, and she hopes eventually to get into an occupation of radio and TV. We are awfully happy to have you here with us this morning. Have you something you'd like to say to us?

MISS INDIAN AMERICA: I'd like to thank those—in behalf of my Indian nation, those people that are trying to help our people on the reservations, because we need a lot of help. I'd like to tell you a little bit about my reservation, back on the Navajo Reservation. Sometimes when you travel across the Navajo Reservation, you may see a hogan sitting out there in the middle of nowhere. To the side of the hogan, you may see a shack. Around the hogan, barrels of water, piles of wood, a sheep corral, a wagon, sometimes a pickup; out in the distance, our father hauling water for his family; out into another distance, a small child herding the sheep. The sheep gives him meat, clothing, and his bedding. Along with him he's dragging a little pup, trying to teach the slow pup how to herd the sheep so that, just in case he left home to fulfill his dream, that this pup might take care of the sheep. A little Indian child dreams for things. He wants better things for his people, better education. So I hope that most of you will realize this; that we all have dreams—dreams to better our people, to improve our land, because we have so much pride with what we have. And I thank you.

(Applause)

PRESIDENT GRAYBILL: You may be seated. We're very happy, Miss Indian America, that you could be with us this morning and be in Montana. We Montanans are proud of our seven reservations and many tribes, and most of us in this room have many friends among the Indians. And we certainly appreciate your coming here and talking with us, and we wish you well on your year's reign as Miss Indian America. Thank you very much. Very well, Order of Business Number 4, Introduction and Reference of Delegate Proposals. None. Order of Business Number 5, Final Consideration of Proposals. The Chair would like to announce that General Government 1 and 2 is on final consideration. However, we have made arrangements this morning that whenever a report has passed the Committee of the Whole, the Style and Drafting Report on a—an article has passed Committee of the Whole we're having it printed, so that the final draft will be on your desk. And unless I hear objection, we'll pass final consideration of General Government 1 and 2 this morning, because by tomorrow morning, you'll have the text on your desks as amended in the Style and Drafting debate in the Committee of the Whole. But probably beginning tomorrow, we will be passing those that reach final consideration. Order of Business Number 6, Adoption of Proposed Constitution.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 7, Motions and Resolutions.

Oh, pardon me, Mr. Mahoney, do you have a—

DELEGATE MAHONEY: I have a motion.

PRESIDENT GRAYBILL: Very well.

DELEGATE MAHONEY: Mr. President. I ask that we reconsideration our action in adopting Resolution Number 11 and resubmit it back to the Rules Committee for some further discussion.

PRESIDENT GRAYBILL: Very well. Do you want to say—give the reason for that, Mr. Mahoney?

DELEGATE MAHONEY: Yes, Mr. President. I would like to discuss some information that I have received this morning in to—going over to the Purchasing Agent's office. And I went down there—I'd like to have the Convention know I went down there on my own free will and volition. A fellow called me this morning about 7:00 in regard to this matter. And I might state, I wonder if we go out here—we're—as I understand from them, there is two different sizes of this and one will cost approximately $10,000 less than the other. And if this size that we adopted the other day goes, it will cost 12 cents to mail it, and the other size will cost only 8 cents. Now, I know this is a County Clerk and Recorder's proposal, and I'd like to discuss it with the Rules Committee. This is the only thing I'd like to have, Mr. President.

PRESIDENT GRAYBILL: Very well. The Chair would like to say that you did not bring that matter to the Chair's attention. And the Chair and the Rules Committee have discussed it, and there are committees making those decisions. And the decision has not—we have not accepted the bids yet, and we do have some information that perhaps you don't have about the situation. Now, if the body cares to reconsider it, it may; but I would recommend against it. Is there other discussion?

Mr. Murray.

DELEGATE MURRAY: Mr. President. I hate to rise and discuss this matter, because I'm the Chairman of the Rules Committee and it would be within my province to have this matter reconsidered. However, I note that the motion for reconsideration was not properly phrased by the words "having voted on the prevailing side". I also note that under Rule 66, Motions for Reconsideration, that any delegate who voted on the prevailing side may move for a reconsideration of any question at the same session day of the Convention. It thus appears to me that, in actuality, the motion is out of order. I would be more than pleased to discuss this matter with Mr. Mahoney in detail, as I have carried the burden of the investigation of this matter and the discussion with the Purchasing Department and a printer and the Secretary of State's office, and others involved.

PRESIDENT GRAYBILL: What rule did you refer to, Mr. Murray?

DELEGATE MURRAY: Rule 66, Mr. President.

PRESIDENT GRAYBILL: Rule 66 says, "Any delegate who voted on the prevailing side may move for a reconsideration of any question at the same session day of the Convention or may give notice that he will make such a motion not later than the next succeeding session day." Mr. Mahoney, no notice having been given, I'm going to rule your motion out of order. I am going to suggest that the Rules Committee meet with you, and I'd be happy to meet with you to discuss the matter. But I think that we ought to handle it that way.

DELEGATE MAHONEY: Mr. President. Being as you've ruled this out of order, I think it's very highly irregular when this was handled yesterday—the other evening at the very end of business. And there was no discussion—practically the only—given by the Chairman of the Rules Committee. This information has just come. I think it's—if we have a rule that says that you can't come back the next morning—Now, I understood, at this time of the rules, that the reconsideration had to be done in the Committee of the Whole the day before it left. But if we have written the thing that you can't go on the next succeeding time and have—and ask for it, I think our rules certainly need changing.

PRESIDENT GRAYBILL: That may be, Mr. Mahoney. I will be glad to talk to you about it. I'm sure the Rules Committee, to whom this duty has been assigned, will be glad to talk to you about it. But I'm going to rule you out of order on your reconsideration of Rule—Resolution Number 11. Are there other motions or resolutions? Unfinished Business, Order of Business Number 8.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Number 9, Special Orders of the Day.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Number 10, General Orders of the Day.

DELEGATE MURRAY: Mr. President.

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: I move that the Convention resolve itself into Committee of the Whole for consideration of business under General Orders.

PRESIDENT GRAYBILL: The motion is to resolve this Convention into Committee of the Whole for consideration under General Orders. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.

(No response)

PRESIDENT GRAYBILL: So ordered.

(Committee of the Whole)

CLERK HANSON: Mr. President. The Style and Drafting Committee Proposal Number

4, having been duplicated and placed on the delegates' desks on the 3rd day of March, 1972, at 9 o'clock a.m., is now in compliance with Rule 23 of the Montana Constitutional Convention Rules. March 7th, 1972, the following committee proposals are now on General Orders: Bill of Rights, Education, Public Health, Local Government, General Government, Style and Drafting Number 3, Style and Drafting Number 4. Mr. President.

CHAIRMAN GRAYBILL: Very well. This morning on General Orders, we'll take up Style and Drafting Legislature first.
Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, members of the committee. The style and drafting problem with the Legislative Article is probably the most difficult we're going to face, because we have two articles. However, they are more or less uniform except for Sections 1, 2 and 3 and some changes that were necessary because of the Habedank amendment, which provided that in 1980 there would be a plebiscite on the subject. And if the people voted to go bicameral, we would have to have some article to work from. Now that's assuming that we're unicameral from the adoption of the Constitution until 1980. So I'll be making references to that, and I think it'd be best to work from page 10. Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 1 of Report Number 3 of the Style and Drafting Committee, it recommend the same do pass.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: There should be no difficulty with Section 1. We made a small change in style only.

CHAIRMAN GRAYBILL: All right. If everyone will turn to page 10 so you can follow us. Is there any discussion of Section 1? If not, you've heard the report of the committee Chairman that this be adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

DELEGATE GRAYBILL: Section 2.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 2 of Report Number 3 of the Style and Drafting Committee, it recommend the same do pass.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Again, style only. We used the—not—we put—word "smaller than"—not—instead of "not less" and "larger". Otherwise, no substantive changes; only style.

CHAIRMAN GRAYBILL: Is there any discussion of Section 2? This is the unicameral legislative body. If not, all in favor of adopting Section 2 as amended, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

DELEGATE SCHILTZ: Mr. President [Chairman]. I move that when this committee does arise and report, after having had under consideration Section 3 of Report Number 3 of the Style and Drafting Committee, it recommend the same do pass.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: We have a typo on page 3. We struck "terms" in the caption, but if you will note, we kept "terms" in, back in the final printed version which precedes this. There is one problem here so far as substance is concerned, and that's the problem of a senator who is elected for a 4-year term and has 2 still to run; if in 1980 there is a reapportionment, he might have that left over. Now, what—the Style and Drafting Committee they drafted—or they wrote this in such a way that—and it's our impression—that that senator would be out of a job. If there's any problem there—that's somewhat substantive, and if there's any problem there, you ought to face it right now. In short, it's—we think the legal consequence is that you would have a brand-new Legislature and that that particular senator would be out.

CHAIRMAN GRAYBILL: And that's—how has that been adjusted in Section 3?

DELEGATE SCHILTZ: We didn't do anything with it, but I raise it because it's somewhat anomalous situation in the language we had. And I'm just raising it so the Convention will be aware that that is what the apparent intention is. We faced it because it appeared to us that it was a hole in the operation, and we didn't take it upon ourselves to spell it out one way or another. But I'm just telling you that a man with 2 years to run—or 2 years still to serve, in the event of a reapportionment, so far as we're concerned, is probably out of a job.

CHAIRMAN GRAYBILL: Mrs. Reichert, I believe you were in charge of this part of the article when it was adopted. Do you see the problem that he's talking about?

DELEGATE REICHERT: Yes, I do. Originally, in the first proposal we considered, there were 2-year terms, so this problem would have been nonexistent. We didn't deal with staggered terms when the committee first considered the terms of the members. However, with the 4-year staggered terms, I can see, and I wish that it could be worked out somehow in the language here so that it would be clear.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. President [Chairman]. I don't believe there's any problem here, because we have it happening today in our present Constitution and the court-order rulings have made it that the—if a senator is districted out, his term is expired; if he is in his district and has 2 years to go, he remains. I believe that's been the ruling so far, so I don't see any problem here, really, because I thought about this when we were drawing the article, that the court orders would take care of this in reapportionment. But I do have a question here, Jack, on the word "senator". I don't believe you made the correction back on page 21 on here, did you? Suppose we do go back in 1980 to a bicameral, would the word "senator" be adequate? Wouldn't we want "the legislator"?

DELEGATE SCHILTZ: On 1, 2 and 3, I don't know if we said Senate—that the first time we used "senator"?

DELEGATE AASHEIM: Yes.

DELEGATE SCHILTZ: If you'll look at page—

DELEGATE AASHEIM: It would apply to a senator but not a representative.

DELEGATE SCHILTZ: Just a minute. Section 15 incorporates the Habedank amendment. And we got to—okay—look at page 17, where we put Section 1 in and—

DELEGATE AASHEIM: I see it now. You're all right.

DELEGATE SCHILTZ: —Section 3. We used the word—we converted, in other words. I don't think there's any trouble, Mags, with Section 1, or 2, or with 3.

CHAIRMAN GRAYBILL: Apparently, it's handled differently, Mr. Aasheim, when we get to the bicameral. Is there other discussion about Section 3 of Article V, the unicameral?
Mr. Harper.

DELEGATE HARPER: Didn't this already happen once in reapportionment? This same issue was faced, and I think the decision was made that everybody had to run again. Wouldn't that be the logical assumption once again? I mean, I don't see any problem if we leave the wording just as it is.

CHAIRMAN GRAYBILL: That was Mr. Aasheim's point. Yes, sir. Very well. All in favor of Section 3 as amended by the Style and Drafting, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 4.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section 4 of the Style and Drafting Committee Report Number 3, it recommend the same do pass.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: We made mostly style changes, but we did do some guessing. If you look at page—or line twenty-two and a half, you'll find that we substituted the word "general election", where the report that came off the floor just said "1 year next preceding the election". That could have meant primary, and that's a substantive change, I guess. We put "general" in there in any case, and we carried it on. Down below, on the next—two lines subsequent, the committee report did show "general election", so we made the two conform. Otherwise—let me see, I've got some notes here. Well, we rephrased this, and this is the way we assumed the intent was. We provide that if a county is more than one district, you must be a resident of the county for 6 months; if there are several counties in the district, you must be a resident of the district 6 months. We spelled that out, and we assumed that was the intent of the Committee of the Whole.

CHAIRMAN GRAYBILL: Very well. You can see that on line 22, the word "general" has been added to make it conform with line 23. The wording has been rearranged, but the in—the sense is still there; that they must be a resident of the county if it contains one or more districts, or of the district if it contains all or parts of more than one county. Is there any question about Section 4? Any debate or discussion?

Mr. Habedank.

DELEGATE HABEDANK: No debate, Mr. President [Chairman]; I would like to ask a question just so it gets clarified into the record. Reading Section 4 with the first line of Section 14 on page 15, I assume that there is no question in reading those two, but what—the person that resides in the county, if it contains more than one district, will not be voted upon by the entire electorate of the county, but only by the members of the district in the event he files in a district in which he does not reside. Is that correct?

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Well—I don't see any problem with it; I'll take another reading on it. Well—it doesn't say anything about who shall vote. That particular section only talks about who is qualified as a legislative candidate. That may come up somewhere else, Otto; I don't know.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: I drafted the original language, Mr. Chairman, and that was my intent, Mr. Habedank—just exactly the way you've stated it.

CHAIRMAN GRAYBILL: Very well. Is there further discussion of Section 4? If not, all in favor of Section 4 as amended, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: Adopted. Section 5.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section 5 of Report Number 3 of the Style and Drafting Committee, it recommend the same do pass.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Now, here's a small problem that I raised when I first started talking about it. We only made style changes except that instead of "member of the Legislature"—remember, this is the unicameral section—we used the term "senator". We did it advisedly, because in Section 1, it's recited that the Legislature shall be one chamber whose members are designated "senators". So we attempted to carry "senator" throughout. Now, if in 1980 we should go to bicameral having already been in unicameral, then "senator" is not an appropriate word. It was the decision of the committee to use "senator" throughout in that situation, even though it wouldn't be an appropriate word after 1980, but to correct it in the Transition Article that'll be at the end of the entire Constitution. Some of the—Mr. Harris particularly—and he's talked with me and with my staff and with Mr. Aasheim—would prefer to continue to use the words "member" or "members of the Legislature" whenever that appears. I call it to your attention; it's your decision to make, and I have no strong feelings about it either way.

CHAIRMAN GRAYBILL: Do I understand you to mean, Mr. Schiltz, that in the Transition Article, you would provide that in the event that in 1980 we changed, then the wording would change at that time?

DELEGATE SCHILTZ: No, my intent would be to say in the Transition Article that in the event we went to bicameral after 1980, that the term "senator" meant members of the Legislature or member of the Legislature.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Would Mr. Schiltz yield to a question?

CHAIRMAN GRAYBILL: Mr. Schiltz?

DELEGATE SCHILTZ: Yes.

DELEGATE AASHEIM: Jack, I wonder—Instead of trying to reword, rephrase the unicameral proposal, how would it be to say that the bicameral proposal would go into operation in 1980?

DELEGATE SCHILTZ: Well, the trouble with that is, we will then have to print in the Constitution, as finally adopted—after the people adopt it. If they adopt unicameral, we'll have a whole bunch of worthless language in there that says "bi"—all that whole bicameral section. So we've attempted, by altering Sections 1, 2, 3, 10, 13 and 14, I guess, incorporating them at length so that the printed version of the Constitution will be just exactly what it is. There will also be something in the Transition Article that says that the Attorney General shall make a constant review of updating the constitutional language for things that don't become operative for one reason or another, and this would be one of them. After 1980, then, the prints of the Constitution would provide a "uni" if it went back to unicameral. We're making two assumptions here: we're assuming that the people take unicameral, and we're assuming that they reject it in 1980. One or more of them might be unreasonable; but in the transition, we could provide and will provide that the Attorney General will continue to update, and then it wouldn't be overburdened with bicameral language or unicameral language.

DELEGATE AASHEIM: I have another question.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Jack, then the problem of doing a lot of printing would be in 1980 and not in this election this year, is that what you mean?

DELEGATE SCHILTZ: There's no problem this year. We have to print it all anyway.

DELEGATE AASHEIM: The problem would be in 1980?

DELEGATE SCHILTZ: The problem would be having a constitution in the beginning of all the statute books that had a terribly cumbersome, long article that didn't pertain anymore.

CHAIRMAN GRAYBILL: Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, I have the constitutional amendment of the State of Nebraska that initiated the unicameral, and I noticed that throughout this amendment, they do not refer to senators; they refer to members of the Legislature. And I'm inclined to agree that instead of substituting the word "senators", such as in Section 5, we retain the original language, "each member of the Legislature". I think it would be simpler in the event that we do revert back to bicameral, and I see no point in using the word "senators", except in the original Section 1, that the members shall be designated "senators".

CHAIRMAN GRAYBILL: Mr. Delaney, do you wish to show your presence?

DELEGATE DELANEY: Yes, sir.

CHAIRMAN GRAYBILL: Very well. Mr. Delaney is present.

Now just a moment.

Mr. Aasheim.

DELEGATE AASHEIM: I shall move, Mr. President [Chairman], that we retain the original language, "member of the Legislature".

CHAIRMAN GRAYBILL: All right. The motion has been made that we use the word "members of the Legislature". I take it that then should be the case in Section 2 and Section 3, no?

DELEGATE SCHILTZ: It's already taken care of in Section 3 in the bi—or in Section 15.

CHAIRMAN GRAYBILL: All right. It's only then in Section 5 so far?

DELEGATE SCHILTZ: No, it's going to be in Sections 5, 6, 8, 9, 10—no, 10's fixed—11 and 17.

CHAIRMAN GRAYBILL: Very well. The issue is whether to use the term "members of the Legislature" or "senator". And the motion has been made by Mr. Aasheim to make it "members of the Legislature" or "member", as it will appear later. Is there discussion about which term you want to use? Very well. All in favor of Mr. Aasheim's proposal—or amendment—motion that we use the words "members of the Legislature", say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: Very well. The Ayes have it.

DELEGATE AASHEIM: You should strike the word "senator" too.

CHAIRMAN GRAYBILL: So, then that means we shall strike the word "senator" in Section 5, and we'll use the word "each member of the Legislature". Is that correct, Mr. Schiltz?

DELEGATE SCHILTZ: Right.

CHAIRMAN GRAYBILL: Very well. Is there other discussion on Section 5?

DELEGATE SCHILTZ: No, we're on 4. Oh wait, no, 5; I'm sorry.

CHAIRMAN GRAYBILL: Very well, all in favor of adopting Section 5 as amended, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: The Ayes have it. Section 6.

DELEGATE SCHILTZ: I'm sorry. We have a sub. 2; we were only talking about sub. 1 there.

CHAIRMAN GRAYBILL: Five, sub. 2 now.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 5, sub. 2, of the Style and Drafting Committee Report Number 3, it recommend the same do pass.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: This is predominantly a style change. It isn't very long, but I should note that we changed this to "the elected members of the Legislature", which would also obtain for elected members of each of the other branches or departments of government. It wasn't clear in the original report, so it would read: "a salary commission shall" or—"to recommend compensation for the Judiciary and elected members of the Legislative and Executive Departments"—the idea being that we weren't sure, and we didn't think that it was intended that everybody in the Legislative branch—the Chief Clerk, et cetera—everybody in the Executive branch—all the employees in the 20 departments should be part of this Compensation Commission.

CHAIRMAN GRAYBILL: Very well. Is there question about subsection 2? The change made by Style and Drafting is to the effect that it applies only to the elected members of the Legislative and Executive Departments. Very well. All in favor of subsection 2 of Section 5, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: And it's adopted. Now, Section 6.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 6 of Report Number 3 of the Style and Drafting Committee, it recommend the same do pass.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz, I wonder if you will now incorporate in your motion the change.

DELEGATE SCHILTZ: I will.

CHAIRMAN GRAYBILL: Right.

DELEGATE SCHILTZ: Mr. Chairman. I move that on line 8, the word "senators" be changed to "members", and on line 17, the word "members" be changed to "senators".

CHAIRMAN GRAYBILL: All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed.
(No response)

CHAIRMAN GRAYBILL: So ordered.

DELEGATE SCHILTZ: Otherwise, we only have rather minor style changes in that particular section. So I move that when this committee does arise and report, after having had under consideration Section 6, Report Number 3 of the

Style and Drafting Committee, that it recommend the same do pass as amended.

CHAIRMAN GRAYBILL: Is there discussion of Section 6?

Mr. Aasheim.

DELEGATE AASHEIM: Mr. President [Chairman]. We have a problem here again on line 8 and line 17; the word "senators" is used.

CHAIRMAN GRAYBILL: We just did that, Mr. Aasheim. We just changed that by voice vote.

DELEGATE ASSHEIM: Oh, I'm sorry. On Section 6?

CHAIRMAN GRAYBILL: Yes. We just changed it from "senators" to "members" by voice vote. You have good concentration, Mr. Aasheim. Are there other suggestions on Section 6? If not, all in favor of adopting Section 6, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 7.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 7 of Style and Drafting Report Number 3, it recommend the same do pass.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: There are no changes in Section 7.

CHAIRMAN GRAYBILL: All in favor of adopting Section 7, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 8.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 8 of Style and Drafting Committee Report Number 3, it recommend the same do pass.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: There are no vital changes. On line twenty-seven and a half, the word "senator" should be changed to "member".

CHAIRMAN GRAYBILL: All in favor of changing—

DELEGATE SCHILTZ: Wait a minute, maybe I have another one. No, that's all.

CHAIRMAN GRAYBILL: All in favor of changing "senator" to "member", say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed.

(No response)

CHAIRMAN GRAYBILL: So ordered.

DELEGATE SCHILTZ: Otherwise, we just changed the wording in this. As you will recall, in Suffrage and Elections, we had this same problem as proposed by Mr. Leuthold. So we changed the language here, which is possibly a substantive change, to conform to Section 6 of the Suffrage and Elections Article. In other words, it contemplates freedom from arrest while going to or coming from the election itself. I recommend it pass as amended.

CHAIRMAN GRAYBILL: And this is to conform with the General Government language?

DELEGATE SCHILTZ: Yes, General Government, Suffrage and Elections.

CHAIRMAN GRAYBILL: Is there discussion of Section 8? All in favor of adopting Section 8, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: It's adopted as amended. Section 9.

DELEGATE SCHILTZ: Mr. Chairman. I move to amend Section 9 on the Style and Drafting Report, at line 9, by striking "senator" and inserting in lieu thereof "member".

CHAIRMAN GRAYBILL: All in favor of changing "senator" to "member", say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed—Mrs. Reichert, is that all right?

DELEGATE REICHERT: Well, Mr. Chairman, I was just going to suggest perhaps we should say "a member of the Legislature".

DELEGATE SCHILTZ: I would—I don't resist it very hard, but they can't be a member of anything else under the Legislative Article, I wouldn't think.

CHAIRMAN GRAYBILL: Mrs. Reichert, we've used "members" several times, because we used "member of the Legislature" the first time. Do you want to go back and change all the other ones?

DELEGATE REICHERT: In some cases, I think it would be better, but in this case particularly. Because in some instances in sections we mentioned Judiciary and Executive Departments. I know that this is exclusively the Legislative Article, but still I think it's much clearer to say a "member of the Legislature" in this case.

CHAIRMAN GRAYBILL: All right. Mrs. Reichert, you've got to make a motion or else I have to make it for you. You tell me what you want to do, and we'll make it.

DELEGATE REICHERT: I move that in Section 9, line 9, we change the word "senator" to "member of the Legislature".

CHAIRMAN GRAYBILL: Mrs. Reichert has moved that we change it to "member of the Legislature". Is there discussion?

(No response)

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: Well, the Chair is in doubt. All right, we'll vote on that. Now, all in favor, vote Aye on the voting machines; and all opposed, vote No. We have a close one. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well; 39 having voted Aye, 28 having voted No, we'll use "member of the Legislature".

Go ahead, Mr. Schiltz.

DELEGATE SCHILTZ: As to Section 9—well, I guess I haven't made a motion. I move that when this committee does arise and report, after having had under consideration Section 9, as amended, that it recommend the same do pass.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: We completely rewrote this. There's no real change in substance. If you want to check the substance, we don't think there is any. I see Mr. Aasheim standing up; I guess he must have some problem.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Mr. President [Chairman]. There is a change here that I think we should be aware of. In our original draft, we said no legislator shall, during the time for which he is elected, be appointed to any civil office under the authority of the State of Montana created during such time. Now there has—you agreed to change that originally, but there is some disturbed people in regards to making this change. And I have assured them that a person could be a legislator and serve on—as an adviser, or be on a board of some sort. And I believe Miss Speer—is Miss Speer here today? She had been concerned about this matter that a person will be denied the right of serving in an honorary capacity with the present wording. And I think maybe we should probably discuss that. That's the intent of—

DELEGATE SCHILTZ: Well, I heard you emphasize the word "created", and I don't find that anywhere. This is the sort of thing we're dealing with, and I don't see the word "created during his term of office" anywhere.

DELEGATE AASHEIM: That was in the original, Jack.

DELEGATE SCHILTZ: Well, it didn't come from the Committee of the Whole that way.

DELEGATE AASHEIM: No, the Committee of the Whole adopted the present Section 7 of the Constitution. So this is not any of your fault at all. I was just going to wonder if it's understood by the group what we have done here.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman. May I ask either Mr. Schiltz or Mr. Aasheim a question? Under this Section 9, would a member of the Legislature be prohibited from holding a reserve commission in the military service?

DELEGATE SCHILTZ: Well, we talked about that and we decided that we had to take the sense of the office here—or I mean the sense of what was given to us, and it made no reservation about military commissions. Although we then referred to what they're doing in the national Congress and had some little information that Senator Goldwater and some of those people are required to resign their commissions, or there's some talk about their doing it. So we just put it in the way it was. It's a substantive change we didn't take upon ourselves to make.

CHAIRMAN GRAYBILL: Is there other discussion of Section 9?
Mr. Habedank.

DELEGATE HABEDANK: I would like to ask a question of Mr. Schiltz. In Section 9, as Mr. Aasheim has pointed out, on line 4, it says, "during the term for which he has been elected, be appointed to any civil office under the state". Now, that would prevent a legislator from being appointed a District Judge or any other officer during the term for which he is elected, as I would interpret it. Where, in your rewritten change, do you have this covered? As I read your rewrite, he could not hold an office but there's nothing to prevent him from being appointed to that office during that term.

DELEGATE SCHILTZ: For one thing, we didn't know what "under the state" meant. We decided that it was an imprecise term that had no real legal consequences. We could find none, so we deleted that. I agree with Mr. Habedank that as of this moment, no member of the Legislature, during his term and until that term has run completely out, can be appointed to the bench, and probably not appointed or run for anything else. I don't know; this is the way we got it.

CHAIRMAN GRAYBILL: Mr. Drum, the journal may show your presence now, so you may vote.
Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman]. I'm concerned about the prohibition against holding the office if it applies to a member of the reserve component of the armed forces. We think more in terms of the higher elective offices; but if you strike out the City Alderman, County Commissioners, county offices and the many other offices, it seems to me that this may be more restrictive than we really mean for it to be—that we may not have given this enough consideration.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I think if Mr. Davis and all the rest of you that were concerned about reserve officers—it says any civil, federal, state, county or municipal office—and we specifically put "civil" in there to exclude that sort of military thing. I overlooked that in the first—

DELEGATE DAVIS: Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: For the benefit of the journal and the records, then, it would be the intent of this body, as I understand it, that this does not restrict any member of the reserve component of any branch of the armed services from filling these offices, notwithstanding the militia that's tagged on the end. Would that be correct, Mr. Schiltz?

DELEGATE SCHILTZ: Well, I can't speak for the entire body. That would be the intent of the committee, I think. If you look at the comments, it might say there. No, we just took care of the "under the state" bit.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman]. My only thought is to get this in the comments, or in the journal, that this prohibition to—the intent of this body is not a restriction in this regard. Thank you.

CHAIRMAN GRAYBILL: Very well.
Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President

[Chairman]. I'd like to ask a question of someone in here, if they know. Does the state Legislature appropriate any money to the National Guard in Montana?

CHAIRMAN GRAYBILL: Well, the answer to that is, "Yes, on occasions."

Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman]. I move that the journal show that—the intent of this body that this particular section does not prohibit members of the armed services or any reserve component thereof from being prohibited from these offices.

CHAIRMAN GRAYBILL: Very well. Mr. Davis has just made a motion in connection with Section 9 that the journal show that it be the sense of this body that this section does not prohibit those in the military reserve from holding civil offices.

Mr. Aasheim.

DELEGATE AASHEIM: Won't we have to suspend the rules to make this adoption? It's a substantive change.

CHAIRMAN GRAYBILL: We're not changing the language. We're just making a note to the journal. I don't see that it would need that. I think it's just this—Mr. Davis wants to clarify this matter so if it came up in the future and our journal was looked to, it would be quite clear that this body intended this not to cover limitations on reserve officers—not to include limiting reserve officers from holding these other offices. There's no substantive change.

DELEGATE AASHEIM: The question arises in my mind: are we going to allow a legislator to serve in a capacity as an adviser to some board which has no compensation? Would he be denied that?

CHAIRMAN GRAYBILL: The issue now—I think you have an interesting point, but the issue now is whether or not—the issue now is on Mr. Davis' motion to have the journal show that it does not apply to military reserve officers or personnel. Is there other discussion of Mr. Davis' point? All in favor of Mr. Davis' motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: It's adopted, and the journal may so show.

Now, Mr. Aasheim, did you want to complete your point?

DELEGATE AASHEIM: It's okay the way it stands, as far as I'm concerned, but I just wanted everyone to be sure that they understand what we're doing. Do you want to deny a legislator the right to serve in some advisory capacity in which he might be well informed and might be valuable to the state? Why should he be denied that right?

CHAIRMAN GRAYBILL: Turn off Mr. Aasheim's mike, please.

DELEGATE HABEDANK: I move to amend Section 9 on line 9 following the word "not" by inserting the following words: "be appointed to nor". This would make the sentence then read, "During the term for which he is elected, a member of the Legislature shall not be appointed to nor hold any federal, state, county or municipal office." I change no other wording.

CHAIRMAN GRAYBILL: Just a minute. I'm trying to fix the journal, Mr. Habedank. All right, now you may speak. Mr. Habedank has proposed an amendment to line 9 of Section 9 to add the words "be appointed to nor", so that it would read: "—member of the Legislature shall not be appointed to nor hold" any civil office.

Mr. Habedank.

DELEGATE HABEDANK: Mr. President [Chairman], I—

CHAIRMAN GRAYBILL: Use your mike now, Mr. Habedank.

DELEGATE HABEDANK: Mr. President [Chairman]. The reason for this amendment is that, as I construe it, the wording of the Style and Drafting Committee leaves out the disqualfication which was contained in the Section 9 as originally adopted. As I would read it, as rewritten, it would permit a member of the Legislature, during his term—he would have to resign—but during his term, he could be appointed to be District Judge. He could be appointed to any other civil, federal, state, county or municipal office, although he could not hold both offices. I think this body should make a specific determination. I do not know whether they were aware of what was contained previously, but I think we should specifically decide on this thing so no question could arise in the future.

CHAIRMAN GRAYBILL: Very well. The Chair understands the sense of Mr. Habedank's amendment to be—to limit appointments during a term in office to members of the Legislature. In other words, the members of the Legislature cannot be appointed to some other office and resign his legislative office and take the new office under the Section 9 as we originally adopted it, because of the word "appointed" on line 4 struck out. Mr. Habedank is merely making this conform to that; and if this body doesn't want to do that, now is the time to change it; but at least that's the sense of Mr. Habedank's amendment. Is that correct, Mr. Habedank?

DELEGATE HABEDANK: That is correct.

CHAIRMAN GRAYBILL: So that under this amendment, a person cannot get appointed to some other office and then resign his legislative duties.

Mr. Davis.

DELEGATE DAVIS: I think you probably clarified my question to Mr. Habedank, but would you yield to a question, Mr. Habedank?

CHAIRMAN GRAYBILL: Mr. Habedank?

DELEGATE HABEDANK: I yield.

DELEGATE DAVIS: If you were elected to a 4-year term, you could not then hold any other office that—even if you did resign, during that term. Is that your understanding?

DELEGATE HABEDANK: I could hold another office, but I could not be appointed to it. I could resign and run for it. I had this called to my attention very strongly while I was on the Legislative—on the Revision Commission, by Bill Speer, who wanted to be appointed as District Judge in Yellowstone County and thought he could be appointed as District Judge, but because of this prohibition in the Constitution, he couldn't even resign his office and then be appointed. He was prohibited from being appointed to the office of District Judge during the term for which he was elected. I at that time thought it was a little ridiculous, and I still think it's a little ridiculous, but I think we should have the matter completely cleared up. I'm not in favor of the prohibition that I have put in my amendment. I'm against it, but I think we should decide it.

CHAIRMAN GRAYBILL: For your information, when we debated it the other day, I recall the point being made that the reason is to prohibit the Governor or someone else from offering a job to a legislator in order to get something done and then have him resign and appoint him to an office. Now, that's the purpose of the language, and the language that's been proposed does clear up Section 9, as amended. But you have to decide now what to do.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I don't think Mr. Habedank cured the problem that he's talking about, because if you can't hold the office, why, the same rule still obtains as the one he thinks he's cured. And that obtains throughout his 4-year term, if that's—if he's a Senator and has 2 years to go.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: I hate to disagree with Mr. Schiltz, but the difference—as I look at it, he could not hold his office and serve in another office. But with the prohibition as it was originally written in, he couldn't resign his office which he doesn't hold and then be appointed during that term for which he was elected.

DELEGATE SCHILTZ: Mr. Chairman. We're not talking about holding his Legislative office. We're saying, according to the amendment, "shall not be appointed to nor hold" any of these other offices.

CHAIRMAN GRAYBILL: Very well.

Mrs. Babcock.

DELEGATE BABCOCK: May I ask Mr. Schiltz a question, Mr. President [Chairman]?

CHAIRMAN GRAYBILL: Mr. Schiltz?

DELEGATE SCHILTZ: Yes, indeed.

DELEGATE BABCOCK: Would this conflict with the Executive Article in regard to a candidate running for office while he has another office?

DELEGATE SCHILTZ: I'm not clear. Do you have a particular section in mind?

DELEGATE BABCOCK: Maybe Mr. Joyce could help me out.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. As I recall, we specifically provided in the Executive Article, and this was passed by the Committee of the Whole, that a holder of an elected Executive office could run for another office during his term.

DELEGATE SCHILTZ: Do you have the section, Tom?

CHAIRMAN GRAYBILL: One answer to your question, Mrs. Babcock, is that this applies to the members of the Legislature and not to the Executive.

DELEGATE BABCOCK: Our intent, Mr. President [Chairman], was to try to have them all be the same throughout the Legislative, Judicial and Executive. I have the information he wanted.

DELEGATE SCHILTZ: It was 5, sub. 2?

DELEGATE BABCOCK: Yes, 5, sub. 2, on page 11 of the Executive Article.

DELEGATE SCHILTZ: Well, it particularly—I don't know who we are who wanted them all the same, but 5, sub. 2, says that somebody in the Executive Department may be a candidate for any public office during his term. This says that a legislator—and the intent was, as I recall, that the—nobody could give the legislator a bribe of any kind, or a hidden bribe, by offering him a judgeship or any other job. Whether it's valid, I don't know. We did it the way it was, but I do want to be very clear that Mr. Habedank's amendment doesn't cure the problem that would allow Mr. Speer to resign and become District Judge, because it says he shall not hold any office. And we thought that "hold office" was sufficient, because if he was proscribed from holding office, he couldn't very well be appointed to it, or certainly he wouldn't be appointed to it.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Will Mr. Habedank yield to a question? The way your amendment would make this article—or section imply that a man could be a Mayor and run for the Legislature, but he could not, while he's in the Legislature, be appointed to an office. He could be a judge and run for the Legislature. He could hold any office and run for the Legislature, is that correct?

DELEGATE HABEDANK: Mr. Aasheim, as I would construe this as it is written by the Drafting Committee, and they—I think this is a Style and Drafting measure—I just want to be sure it says what we intend. "During the term for which he is elected, a member of the Legislature shall not hold any civil, federal, state, or—county or municipal office." That would mean, to me, that if he were a Mayor, he could run for the Legislature. If he was elected, he could resign the job of Mayor and serve in the Legislature. If he was in the Legislature, he could run for Governor, and if he were elected, he could resign and serve as Governor, the way the Style and Drafting Committee has it written. He could, as they have it written, as I would construe it, he could be appointed a District Judge. He would have to resign from the Legislature to be appointed, but he could be appointed during that term. If it means what it says above, I do not see where "be appointed to nor hold" fails to cover it. But I would yield to people like Mr. Schiltz and Mr. Garlington and the other members of that committee. The point I'm trying to create is that if we mean that no one can resign from the Legislature to be appointed to another job, it should be written or stated into the record that there's no question about that being our intent. But I do not read what they have written as preventing that.

DELEGATE AASHEIM: One more question. Your amendment, then, reads "shall not be appointed to nor hold".

DELEGATE HABEDANK: That is correct. I would add those words. I would also be agreeable to Style and Drafting straightening that out, but I don't think they have it straightened out as they have it worded now.

DELEGATE SCHILTZ: Well, Mr. Chairman, I want to say one more time that what Mr. Habedank's overlooks is that both the language we got from the floor and the language we wrote—it says that "During the term for which he is elected," no senator or no member of the Legislature can have one of these other jobs. And he overlooks the "during the term for which he is elected". We're only doing what it says in the beginning but saying it differently. If it's the feeling of this committee that they want to make a substantive change that he shall be allowed to resign during his term and accept one of these other jobs, then the rules are going to have to be suspended. But as of now, we just rewrote what was in there before with no substantive changes.

CHAIRMAN GRAYBILL: Very well. Now the issue is on Mr. Habedank's amendment to add the words "be appointed to nor". And Mr.

Schiltz's point is, Mr. Habedank—is that since it says "during the term for which he is elected", you really don't need to say anything about the appointment. But I suppose you're correct that you could be appointed and not hold. So if the body wants to add "be appointed" back in, they can. And if they don't—why they don't—it really isn't too significant. Is there other discussion on this particular point?

Mrs. Bates.

DELEGATE BATES: Yes, Mr. Chairman. In looking over what we did while we were in debate, we reverted right back to Article V, Section 7, which is the original wording. And it was rewritten by Style and Drafting, but it's no different than what we have now. This is the way my book is marked. And if that's correct, why, it's the same thing. In our committee discussion, we discussed this a great deal about being appointed to another office. But we did feel that boards or commissions or advisory councils were permitted under the present Legislature, as declared by the—any of the cases that have come up previously—present Constitution. Thank you.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I'm just supposed to agree with Mr. Habedank. It seems to me the addition of the word "hold" by the Style and Drafting Committee changed the sense of the original amendment—or the original provision of the Constitution that was adopted by the Convention in the Committee of the Whole. We go on to question—the original Section 9, as originally adopted in the Committee of the Whole, is identical with the current Constitution. It says that no senator or representative, during the term for which he shall be elected—shall have been elected—shall be appointed to any civil office under the state. The purpose of that in the original Constitution, and as construed historically in the State of Montana, is if you're a member of the Legislature, you cannot be appointed to any other civil office in the state. That means a civil office in which you're elected. And the courts have construed "office" to mean not the office of the Assistant Attorney General or any of that sort of thing, but it means an elected office. And so, the purpose was, in effect, and it's been traditionally construed, that a member of the Legislature cannot be appointed, for example, to a district judgeship. And historically if—those with memories can remember that Phil Duncan was a member of the Senate and a vacancy came in the Beaverhead Judicial District, and Phil Duncan was the only one running for the job. He couldn't be appointed to it. As a result, Governor Bonner appointed John Collins to fill in the job until the next section—until the election, at which time Judge Duncan was elected. But then, to go on with the current Constitution, it says, "and no member of Congress or other person holding office under the United States or this state shall be a member of either house during his continuance in office." So it means that no person holding an office under this state can be a member of the House while he's a member of the—while he holds that other office. So the Secretary of State cannot be the Secretary—could not serve in the House, but he could resign as Secretary of State and then go into the House. Now, it seems to me the Style and Drafting amendment would prohibit anyone from holding any such office, which is an extension of the present Constitution. And I think that Mr. Habedank's motion to add "be appointed to" does conform to the sense of the original Constitution; that the addition of the word "hold" is an enlargement of the additional Constitution. I therefore move, as a substitute for Mr. Habedank's motion—I make an amendment to Mr. Habedank's motion that the word "hold" be stricken, so that the new section would read: "During the term for which he is elected, a member of the Legislature shall not be appointed to any civil, federal, state, county or municipal office." This prohibition does not apply to a notary public or a member of the militia.

CHAIRMAN GRAYBILL: Mr. Joyce's substitute amendment—substitute motion to strike the word "hold" will be allowed. And we'll debate that now.

Mr. Joyce—or Mr. Schiltz.

DELEGATE SCHILTZ: Would Mr. Joyce yield to a question, please?

DELEGATE JOYCE: Yes, I shall.

DELEGATE SCHILTZ: Mr. Joyce. Do you understand from what Mr. Habedank has had to say that it is his purpose in this amendment to make it possible for a member to resign during his term and hold one of these offices? And do you think that he has accomplished this?

DELEGATE JOYCE: Well, my point—as I understand Mr. Habedank, all he wants to do is to have the Style and Drafting change conform to the sense of the original Constitution as written. And he makes the point—and I think validly—in his amendment, that a member of the Legislature, as written, would mean that he shall not hold another office. That's the way the Style and Drafting wrote it, and he wants to change it to conform to say that a member of the Legislature shall not be appointed to any office. And that's the way I interpret the original Constitution to mean; but it seems to me that the Style and Drafting Committee, by adding the word "hold" has extended the—has gone beyond what the original constitutional language means, as I read it.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. Mr. Schiltz has misconstrued my purpose. My feeling is that a person should be able to resign and be appointed, but I can see the merit of the debate on the other side. The purpose of my motion was to prevent a person from resigning and being appointed, rather than allowing it. And if it cannot be done in this method, by amending the wording of the Style and Drafting Committee when this thing is done, I would suggest that the wording of the Style and Drafting Committee be deleted in its entirety and go back to the original wording of the Constitution, which was the wording passed by this body and turned over to Style and Drafting; changing it merely so that it would read, "no member of the Legislative Assembly shall", and then making the necessary amendment at the end. But we would retain wording which has been construed through the years and which we understand.

CHAIRMAN GRAYBILL: Mr. Joyce, you hear Mr. Habedank's suggestion. Do you still want to strike the word "hold", or do you want to go back—do you agree with him and want to go back to the original language?

DELEGATE JOYCE: I'll withdraw my amendment to Mr. Habedank's amendment if he wants to withdraw his.

CHAIRMAN GRAYBILL: All right, yours is withdrawn.

Mr. Habedank, do you want to withdraw yours and make another motion that we use the original language?

DELEGATE HABEDANK: Yes, I would like to withdraw my amendment, and then I would move that Section 9 be amended to read: "No member of the Legislative Assembly shall", continuing the words as stricken read, "during the term for which he shall have been elected, be appointed to any civil office under the state, and no member of Congress or other person holding an office, except a notary public or the militia under the United States or this state shall be a member"—and then new words would be—"of the Legislature", in lieu of "either house", "during his continuance in office." In other words, changing it to read—refer to members of the Legislature, we would then retain the wording of the present Constitution.

CHAIRMAN GRAYBILL: Very well. Mr. Habedank has withdrawn his first motion and made a new motion that we substitute for the Style and Drafting language the original language with two changes. One, we changed the word "Senator" or "Representative" to "member of the Legislature", in line with the amendment we had a minute ago. And second, that we change the words "either house" to "the Legislature". Is there discussion on Mr. Habedank's motion?

Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, I'm confused. Is the intent of this to actually prevent appointments during the term of the elected office? Is that—or was that the will of this assembly during discussion? I'd really like to know before I vote on this.

CHAIRMAN GRAYBILL: The intent of Mr. Habedank's motion is to clear up what he and Mr. Joyce and some of us believe is a confusion in the Style and Drafting's rewriting of it and go back to the original language and only make the changes about members of the Legislature. So he wants to go back to the original language, which is out of the present Constitution. Now whether—what that does is it would leave it exactly the way it is. In other words—

DELEGATE FURLONG: Mr. Chairman.

CHAIRMAN GRAYBILL: Yes.

DELEGATE FURLONG: That's my concern. I'd like to know what it is under the present Constitution.

CHAIRMAN GRAYBILL: All right. Do any of you attorneys care to tell him what it is under the present Constitution?

Mr. Joyce.

DELEGATE JOYCE: The present Constitution is exactly the words that are stricken out in line 9.

CHAIRMAN GRAYBILL: He wants to know the effect of that, Mr. Joyce.

DELEGATE JOYCE: Well, the effect of it is that a member of the Legislature can't be appointed to any other office. So that if you are a member of the Legislature and you're—during the full course of your term—say you're a Senator and you're just newly elected; you've got 3 years to run; you are—only served the 60 days. You cannot be appointed to any other office. You cannot be appointed Secretary of State if a vacancy comes there; you cannot be appointed State Auditor; you cannot be appointed a District Judge; you cannot be appointed as a Supreme Court Judge. And that has been the law of Montana ever since 1890.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: May I direct a question to Mr. Joyce, please?

CHAIRMAN GRAYBILL: Mr. who?

DELEGATE JOYCE: I yield.

DELEGATE FURLONG: Could you resign for the office for which you were elected and then be appointed?

DELEGATE JOYCE: No, you may not. Under the present Constitution, you could not do that. And as I remember the debate here, I think it was Mr. Aronow who made the substitution on his motion, and that it carried, to go back to the original Constitution.

DELEGATE FURLONG: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Furlong.

DELEGATE FURLONG: I think I realize the reasoning for it, but we're changing the term to 4 years, if this passes. And in spite of the fact that there may be some skulduggery in appointments, I would certainly hope that the Convention would reconsider its action. I'm not at all sure that it's wise to lock elected people out of appointed positions. Four years is a long time to dedicate a life, and there are any number of advancements that could come about in which a person of great qualification could be denied a service or an advancement.

CHAIRMAN GRAYBILL: Mr. Furlong. The Chair would like to point out to you that we're dealing with the style and drafting aspect of this, and if you want to amend what we did the other day, you're going to have to move to reconsider and suspend the rules. Now, I'm not saying you shouldn't, but I'm saying that the issue you raised cannot be reached at this time.

DELEGATE FURLONG: May I ask the Chair a question?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE FURLONG: If such a motion was not forthcoming, would this be the last time at which such a motion could be forthcoming?

CHAIRMAN GRAYBILL: Well, that's hard to say. I suppose you can suspend the rules any time.

DELEGATE FURLONG: Mr. Chairman.

CHAIRMAN GRAYBILL: You'd have to catch it when the matter is before us.

DELEGATE FURLONG: Mr. Chairman. Would that be the only method then, by suspending the rules?

CHAIRMAN GRAYBILL: Well, the point is that when we adopt these things in Committee of the Whole, we debate them. Then we go back and adopt them, generally instantly that same day, although it could be the next day. And then they go to Style and Drafting. And this report we're dealing with here is Style and Drafting. And all we can change here is Style and Drafting's style; we're not supposed to change substance. We're going to, in a minute, make a motion on another one of these to amend—or to suspend the rules—I don't know whether it'll pass or not—and then you can reach the substance of the issue. So—and after it goes out of here, it goes on to General Orders again; and I suppose you could move to suspend the rules and adopt it at that time, when it's on Order of Business Number 5; but you'd have to suspend the rules to do it. And I'm not for or against your proposition; I see your point. I'm merely saying that it can't be reached while we're debating style, and so I don't want to debate it.

DELEGATE FURLONG: I appreciate the Chair's answer. What I wanted to do is be sure that there may be a later option.

CHAIRMAN GRAYBILL: Well, there probably is. Check with Mr. Murray. All right. Now, the issue is on Mr. Habedank's motion to go back and use the old language as amended by the words "members of the Legislature" and "the

Legislature". Does everybody understand the proposition? Anyone want it explained?

(No response)

CHAIRMAN GRAYBILL: Is there further discussion?

(No response)

CHAIRMAN GRAYBILL: All in favor of Mr. Habedank's amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted as amended. Now that strikes the Style and Drafting language and goes back to the old Section 9 language, putting in "members of the Legislature" and putting in "the Legislature" in place of "either body", "either house". Are there other amendments to Section 9 as amended? If not, members of the committee—Mr. Schiltz, do you want me to put the motion? Members of the Committee, you have before you for your consideration, Section 9 as amended and the recommendation of the Style and Drafting Committee that when this body arises and report, it recommend the same do pass. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: Very well, Section 9 is adopted as amended. Section 10.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10 of the Style and Drafting Report Number 3, it recommend the same do pass.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: In this case, in Section 15, we've changed all the "senator" words, so there's no problem if it goes to bicameral after unicameral. Otherwise, this is mostly style, except that we added the words "for good cause shown" on line twenty and a half. It was the feeling of the Style and Drafting Committee that the report that came from the Committee of the Whole didn't spell this out, and we thought it was probably the intent that that was what should be in there and so we put it in. Otherwise, all style.

CHAIRMAN GRAYBILL: Do I understand, Mr. Schiltz, that the word "senator" here is all right because it'll change later? Is that right?

DELEGATE SCHILTZ: It's changed in Section 15 in the Habedank alternate amendment.

CHAIRMAN GRAYBILL: Very well. And the other substantive change—or the other change, not substantive, on line 20 is that you've added the reason, is that right?

DELEGATE SCHILTZ: On line 20, we said "for good cause shown", yes.

CHAIRMAN GRAYBILL: Is there any question or discussion on Section 10?

(No response)

CHAIRMAN GRAYBILL: So many as shall be in favor of adopting Section 10, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 11.

DELEGATE SCHILTZ: We're on sub. 2. I should have read that that way. Mr. Chairman, I move when this committee does arise and report, after having had under consideration subsection 2 of Section 10 of Style and Drafting Report Number 3, it recommend the same do pass.

Mr. Chairman. There is nothing here except a little bit of style.

CHAIRMAN GRAYBILL: Is there discussion of Section 10, sub. 2? Very well. So many as shall be in favor of adopting Section 10, sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 3.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10, sub. 3, Report Number 3 of the Style and

Drafting Committee, it recommend the same do pass.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Again only style changes, and all very minor.

CHAIRMAN GRAYBILL: Is there any discussion of sub. 3?

(No response)

CHAIRMAN GRAYBILL: All in favor of adopting Section 3—sub. 3, rather, of Section 10, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Adopted—or, I mean, opposed?

(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 4—subsection 4.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 10, sub. 4, Style and Drafting Report Number 3, it recommend the same do pass.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Once again, only very minor style changes.

CHAIRMAN GRAYBILL: Is there any questions about sub. 4 of Section 10? All in favor of adopting sub. 4 of Section 10, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, Nay.

(No response)

CHAIRMAN GRAYBILL: The Ayes have it; it's adopted. Now, Section 11.

DELEGATE SCHILTZ: Mr. Chairman. I move, before I make the other motion, that we change, on line 6, the word "senators" to "members".

CHAIRMAN GRAYBILL: "Senators" to "members" on line 6 of Section 11. All in favor, say Aye.

DELEGATES: Aye.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 11, sub. 1, as amended, that it recommend the same do pass. This is only—we only have style changes here, and relatively minor.

CHAIRMAN GRAYBILL: Are there any negative votes on making "senators" "members"? I trust there aren't. The journal may so show. Try and vote a little more heartily out there. (Laughter) It's very difficult for the Chair, when only three of you vote, to figure out what's happening. Is there any discussion of Section 11? Very well. All in favor of Section 11, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response) Marvelous.

CHAIRMAN GRAYBILL: Adopted. Now, Section 11, sub. 2.

DELEGATE SCHILTZ: Mr. Chairman. I move, on line 9, to amend line 9 by striking "senator" and inserting in lieu thereof "member".

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: So ordered.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 11, sub. 2, Style and Drafting Report Number 3, that it recommend the same do pass as amended.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: These are all style changes. We also incorporated what had been sub. 3 and renumbered the subsections, just for sense. There's no difficulty there that I should inform the body of.

CHAIRMAN GRAYBILL: Is there any discussion of sub. 2? All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: It's adopted. Read, sir—sub. 3, Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10—Section 11, sub. 3, Style and Drafting Report Number 3, that it recommend the same do pass.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: This was renumbered, as I noted before. I've had a little conversation from a couple of people on the floor this morning. We took the last three lines and made a separate section of them. Now, somebody mentioned to me that we move that to subsection 6—as I recall, subsection 6. The concern of the people who talked to me was that this particular verbiage applied only to the conditions that obtained in subsection 3. However, the Style and Drafting Committee treated it as applying to the whole section, because the language says "this section" on line twenty-five and a half. They didn't say "this subsection", and we thought it pertained to the entire Section 11, so we moved it to subsection 6. If anyone has a real problem with that, now is the time to tell us.

CHAIRMAN GRAYBILL: Mr. Schiltz, I have no problem, but I don't understand you.

DELEGATE SCHILTZ: Well, the question that was raised to me, Mr. Chairman, is that we changed substance by making a separate subsection of those last three lines, in that, by doing so, it applies to the entire Section 11, including subsections 1, 2, 3 and 5.

CHAIRMAN GRAYBILL: What are the last three lines? Are they on the next page?

DELEGATE SCHILTZ: "A law may be challenged"—we struck them there. "A law may be challenged on the grounds of noncompliance with this section", it said. If it said "this subsection" we would have left it where they were, but because it said "this section", we conceived that to mean Section 11. So we made a separate subsection of it, as having a different subject.

CHAIRMAN GRAYBILL: Is there discussion?

Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman. I believe that this is a substantive change and that the only place this 2-year period of limitation was discussed in the Committee of the Whole pertained to this subsection 3. And I therefore move to amend the Style and Drafting subsection 3 by reinstating that last sentence that was stricken and changing the word "section" to read "subsection". So that the last sentence, lines 24 through 26 on page 13, would read: "A law may be challenged on the grounds of noncompliance with this subsection within 2 years after its effective date, but not after that period."

CHAIRMAN GRAYBILL: Now, the Chair is still in a high state of confusion. I'm discussing subsection 3 of the Style and Drafting report on lines 13 through 16.

DELEGATE McNEIL: Yes, Mr. Chairman.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE SCHILTZ: See, we struck that. That's a mistake, that sub. 3, the first sub. 3 you come to. Then go down to sub. 4, which has been struck and—

CHAIRMAN GRAYBILL: In other words, the words "on final passage, the vote shall be taken by the"—that should be stricken?

DELEGATE SCHILTZ: No. Start at line 24—"A law may be challenged on the grounds of noncompliance."

CHAIRMAN GRAYBILL: Yes, I see that.

DELEGATE SCHILTZ: That we struck entirely and made subsection 6 of it.

CHAIRMAN GRAYBILL: Yes, I understand.

DELEGATE SCHILTZ: All right.

CHAIRMAN GRAYBILL: What did you do with lines 13 through 16?

DELEGATE SCHILTZ: Nothing. They're as rewritten; they're part of subsection 2. We made a mistake by not striking that sub. 3 up there.

CHAIRMAN GRAYBILL: Oh, the sub. 3 should be stricken.

DELEGATE SCHILTZ: Well, it is struck on the original front three pages.

CHAIRMAN GRAYBILL: I see. So the words "On final passage the vote shall be taken by Ayes and Nays" is part of subsection 2, right?

DELEGATE SCHILTZ: That's right; that's part of subsection 2.

CHAIRMAN GRAYBILL: All right. Now I want to inquire of the body if anybody wants to reopen subsection 2 after seeing the lines 14 through 16.
Mr. Cate.

DELEGATE CATE: Mr. Chairman. I would simply raise the question with Style and Drafting, if we really need that sentence, "On final passage the vote shall be taken by Ayes and Nays and the names entered in the journal".

DELEGATE SCHILTZ: Well, it's still in there.

CHAIRMAN GRAYBILL: It's part of subsection 2 now.

DELEGATE CATE: Yes, but do we need it? Do we need it, because we've already got a recorded vote on every substantive question in the Legislature? And certainly final passage is a substantive question.

DELEGATE SCHILTZ: Well that's a substantive question if you take it out, Mr. Chairman.

CHAIRMAN GRAYBILL: Well, Mr. Cate, if the Chair may. It seems to the Chair that those words were passed by us, and I don't see how we can take them out of here. I suppose there's a difference between recording the vote and taking it on the Ayes and the Nays. In other words, you can record a number; that's one of the problems that we're trying to cover here. Now, does everyone understand that lines 14 through 16, "On final passage", et cetera, are part of subsection 2? And does anyone have any objection to that since we approved it? All right. That will be considered as part of subsection 2. Now we're on subsection 3, and the issue arises on the last sentence, is that it? All right. Now the Chair understands the problem. Does anybody want to do anything about it?
Mr. McNeil, you made a motion and I didn't get it down. What's your motion?

DELEGATE McNEIL: Mr. Chairman. My motion is to reinstate that last sentence that was stricken by Style and Drafting. Reinstate it, changing the word "section" to "subsection".

CHAIRMAN GRAYBILL: All right. Mr. McNeil makes a motion—

DELEGATE McNEIL: And, Mr. Chairman, strike subsection 6. The two should go hand in hand.

CHAIRMAN GRAYBILL: Mr. McNeil makes a motion to add lines 24 to 26 back into subsection 3, adding the word "sub" before "section" and then on the next page, page 14, striking Section 6 where it was set up separately. Your purpose, I think you said, being that you felt that applied to the material in subsection 3; is that it?

DELEGATE McNEIL: Yes, Mr. Chairman. I'm sure that when this sentence was discussed in the Committee of the Whole, it was intended and, in fact, did apply just to subsection 3 and not to the entire section. It may be a good idea to have it apply to the whole section, but I believe that is a substantive change and was not discussed by this body.

CHAIRMAN GRAYBILL: Very well. Is there discussion of Mr. McNeil's amendment?
Mr. Cate.

DELEGATE CATE: That was the intent of our committee, at least—that it only apply to the subsection 3—and so I would support it.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman. I would oppose the substitute motion of Mr. McNeil. Our committee did meet and approved the Style and Drafting proposal here. I believe Mr. Cate missed that meeting. But it was our intent, and we felt that what we really intended by this line, as now proposed in subsection 6, to prevent laws being declared unconstitutional many years later on technical grounds. And most of the provisions—the subsections here in Section 11 deal with procedures as to how a bill is passed, except subsection 5. And we felt that the provision adequately applied here, since appropriations would now be on an annual basis, and 2 years would be plenty of time to challenge a law there because a law really is only in effect for 1 year; the money will be spent after that.

CHAIRMAN GRAYBILL: Is there further discussion? Very well. The issue arises on Mr. McNeil's motion to add lines 24 and 25 and 26 back into sub. 3 and strike Section 6. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it, and it's defeated. Are there other matters on subsection 3?
Mr. Aasheim.

DELEGATE AASHEIM: I think Mr. McNeil is right. We have made a substantive change. And if we're going to adopt the wording of the Style and Drafting presentation, we'd better move to suspend the rules and make that change. I have no objection to the change. I think it might be all right to have it in there. So, Mr. President, I move to suspend the rules for the purpose of adopting—

CHAIRMAN GRAYBILL: Mr. Aasheim, can you do that when we get to 6, first of all? We're not there yet.

DELEGATE AASHEIM: We could. That would be fine.

CHAIRMAN GRAYBILL: At the moment, I'm trying to get rid of just subsection 3. Mr. Romney, the record may show that you're present.
Mr. Schiltz.

DELEGATE SCHILTZ: In anticipation of Mr. Aasheim making that motion, I don't think we made a substantive change, because the language that we had said "this section", which pertains to the entire Section 11 and not just subsection 3—or 4 as it was drafted. So, it pertaining to the entire section, we could make a subsection of it without any substantive change, and that's what we did.

CHAIRMAN GRAYBILL: Are there other amendments or suggestions or debate about subsection 3 of Section 11?
Mrs. Bates.

DELEGATE BATES: Mr. Chairman. I, too, feel that this is a substantive change because our original intent was on the title section only.

CHAIRMAN GRAYBILL: Is there other discussion? Very well. All in favor of adopting Section 11, subsection 3, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted. All right, subsection 4.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section 11, subsection 4, of Style and Drafting Report Number 3, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: There are nothing but very minor style changes in subsection 4.

CHAIRMAN GRAYBILL: Is there discussion of Section 4—subsection 4? All in favor of subsection 4, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Subsection 5, on page 14.
Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration subsection 5 of Section 11, Style and Drafting Report Number 3, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I guess there are no changes here—a comma, maybe, and the renumbering.

CHAIRMAN GRAYBILL: Any discussion? All in favor of subsection 5, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: It's adopted. Now, subsection 6.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration sub-

section 6 of Section 11, Style and Drafting Report Number 3, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I think that has been adequately discussed and voted upon.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: It's immaterial to me; if you feel it's all right to leave it this way without suspending the rules, it's fine. I'm just kind of wondering about our comments. Right now I don't have them available. But if our comments show this applied to our subsection 4, this might be questioned. So just a matter of procedure, I'm going to move to suspend the rules for the purpose of adopting subsection 6 in Section 11.

CHAIRMAN GRAYBILL: All right. I've got to have that in writing, Mr. Aasheim. Very well. Mr. Aasheim has moved, concerning Section 11, subsection 6, of the Style and Drafting report on the Legislative proposal. He moves to suspend the rules for the purpose of adopting subsection 6 of Section 11, the unicameral article. A motion to suspend the rules takes an absolute majority or two-thirds, whichever is less. Is there any discussion?
Mr. Harper.

DELEGATE HARPER: Mr. Chairman. I think that the sense of the group has already been obtained, and I don't know that we need to follow through on this particular motion. The word "section" is used, as Mr. Schiltz pointed out, in number 6 and that was not changed in what is now the new Number 6. Our Legislative Committee went over this in detail; raised this same question. Finally decided that, as Mr. Loendorf said, the real sense and intent of our whole Section 11 had not been changed by it; and so we've decided to go along with the Drafting Committee. I don't think the reconsideration is necessary at this time. We've already accomplished it.

CHAIRMAN GRAYBILL: Is there further discussion? All in favor of Mr. Aasheim's motion to suspend the rules, indicate so by voting Aye on the voting machines; and opposed, No. Have all the delegates voted?
(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?
(No response)

CHAIRMAN GRAYBILL: Close the vote. 38 having voted Aye, 31 having voted No, the motion fails because less than 50 percent or less than two-thirds has voted for it. Very well. What's your pleasure on Section 6? Is there any more discussion of subsection 6 as proposed by Style and Drafting? All in favor of subsection 6, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted. Section 12.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 12, Report Number 3, Style and Drafting Committee, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: We made no significant changes except we changed "may" to "shall" on line 11. In other words, we considered that "shall" was intended there, and I feel sure that it was.

CHAIRMAN GRAYBILL: Any discussion? All in favor of Section 12, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 13, sub. 1.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 13, sub. 1, of Style and Drafting Report Number 3, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Once again, we substituted the "shall" for "may" on line 16 plus. In other words, it will read: "The Governor, Executive officers, heads of state departments, Judicial officers, and such other officers as may be subject to impeachment by law shall be removed from office upon conviction of impeachment." Otherwise, there are no changes.

CHAIRMAN GRAYBILL: The Chair would like to consider Sections 2 and 3 at the same time since there's a motion here on that. Do you have any comments on Section 2—subsections 2 or 3, Mr. Schiltz?

DELEGATE SCHILTZ: Well, we changed it to "Legislature" there, instead of "Senate". "Tribunal hearing the charges shall convict." We attempted to interpret what was intended there. If there's any problem with it, we'd be glad to hear it. I think there is a motion to amend, isn't there?

CHAIRMAN GRAYBILL: Yes. Mr. Harlow, do you want the Chair to read your motion?

DELEGATE HARLOW: Mr. Chairman. Just a few comments before I make the motion to amend this. I was disturbed, when this came in from the Legislative Committee, about the word "conviction of impeachment" and various uses of the word "impeachment". I didn't say anything at that particular time because I thought the Style and Drafting would catch the error. But after it came back from Style and Drafting, I was kind of like Miles Standish. I figured if I was going to do anything, I'd have to do it myself. So I made up these amendments. And I so move now to amend Section 13, subsections 1, 2 and 3, page 4, being lines 10 through 22, to read as follows. Now, it's on this sheet of paper that's been given to all of you. The top part—I amended this, all—Sections 1, 2 and 3 merely for expediency. It deals with the same thing all the way along. You can see there what I took out. I put in one or two other small words. The bottom of the page is the way the thing will read as it is, without the amendment, and on the back of the page are the various comments that I made.

CHAIRMAN GRAYBILL: All right. Now, Mr. Harlow, before we get too far along, we'd better have something read here so that we know the differences. Would you like the clerk to read the amended Section 13—or read the amendments?

DELEGATE HARLOW: Okay, you may go ahead then, Mr. Clerk.

CHAIRMAN GRAYBILL: And read the—why don't you read the amended Section 13—it's the second paragraph—slowly.

CLERK SMITH: "Sub. 1. The Governor, Executive officers, heads of state departments, Judicial officers and such other officers as may be provided by law are subject to impeachment and upon conviction shall be removed from office. Other proceedings for removal from public office may be provided by law. Subsection 2. The Legislature shall provide for the manner and procedure and causes for impeachment and shall provide for a tribunal. Subsection 3. Impeachment can be brought only by a two-thirds vote of the Legislature. The tribunal hearing the charges shall convict only by a vote of two-thirds or more of its members." Subsection 3 of Section 12, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harlow, do you want to explain the changes you're proposing here?

DELEGATE HARLOW: They're on the comments on the second—on the back of this page. The purpose of this amendment is to eliminate the semantically impossible phrases "conviction of impeachment" in subsection 1 and "conviction for impeachment" in subsection 3 and the reference to "removal by impeachment" in subsection 2. Impeachment, of course, is the act of the Legislature in bringing charges against a public official. The dictionary definition is: "The act of charging a public official before a competent tribunal with misconduct in office." You do not convict a man of having charges brought against him or for having charges brought against him. At the trial resulting from impeachment, he might be convicted, but it would be for a wrongdoing and not for impeachment. An official impeachment by the Legislature cannot be convicted—an official impeached by the Legislature cannot be convicted of impeachment any more than a person indicted by a grand jury can be convicted of indictment. In this amendment, the first sentence in subsection 1 is rearranged to make the meaning clear without the use of the phrase "convicted of impeachment". In subsection 3, the meaning is clear when the words "for impeachment" are deleted with no other changes. Under similar reasoning, the words "removal by" are deleted in subsection 2. You do not remove anyone from office by bringing charges against him; he is only removed upon conviction. The meaning of the subsection is not changed. The intent of these subsections is clear, and the proposed changes merely take out the incorrect use of the technical term "impeachment" in the three phrases mentioned. And a little note that this same problem will be in the bicameral section, in Section 13, page 4. I move the adoption of the amendment, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harlow. All right, Mr. Aasheim.

DELEGATE AASHEIM: I think Mr. Harlow has in his amendment the very thing we do have. Because we say, in lines 15 and 16, "such officers as may be made subject to impeachment by law shall be removed from office upon conviction." We don't say they will be removed by impeachment. We say the conviction comes after the charges. So I think the terminology here is adequate. I think it ought to cover what you want.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: Mr. Chairman. It says—you didn't read all of the words. It says "conviction of impeachment". That's the words that I'm objecting to—is "conviction of impeachment". I merely took out the term "of impeachment". I did not change the intent any.

CHAIRMAN GRAYBILL: Mr. Aasheim, the point is that, legally, impeachment is like indictment. And it is not—and you say the word "conviction of impeachment", to Mr. Harlow, is like saying conviction of indictment. And merely indicting is not conviction, so he has, to my way of thinking at least, a legally tenable position here. It's because you add the words "conviction of impeachment". You don't convict them of impeachment. You impeach them and then you convict them. That's separate. I think some of the lawyers might comment if they like, but it does seem to me he has a—

DELEGATE AASHEIM: On line 16, let's put a period after "conviction" and strike "of impeachment".

CHAIRMAN GRAYBILL: Well, that's essentially what he's done. He's made some other minor changes. Is there other—If you want to amend his amendment, fine; but he has done that. Is there other discussion of it?
Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. We considered this matter in Style and Drafting, but we were reluctant to make any changes, thinking that we might be fooling with substance. We ran into the additional problem of having to specify a tribunal which, if it were unicameral, there won't be, because customarily a bill of impeachment is brought in the House and tried in the Senate. But I have no problem. I think Mr. Harlow is right.

CHAIRMAN GRAYBILL: It's the opinion of the Chair that when we adopted this originally, we did mix up the concept of impeachment and conviction. And for the members here who are not lawyers, impeachment is merely a term that implies you're going to be tried. It's like indictment, and it does not imply that you're guilty. And therefore, as in subsection 2 where it says "causes for removal by impeachment", you really aren't removed by being impeached any more than you're removed from office by being indicted in a criminal sense. So I think Mr. Harlow has correctly cleared up the legal language. Does anybody have any other discussion on the matter?
(No response)

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Harlow's proposed amendment to subsections 1, 2 and 3 of Section 13. You have it before you there on the desk, and it reads—as he has cleaned it up there in the bottom half—the substance of which is to take out the idea that impeachment in any way involves conviction. So many as shall be in favor of Mr. Harlow's motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Now, the Chair would—Mr. Schiltz, do you want to move Sections 1, 2 and 3 as amended.

DELEGATE SCHILTZ: Yes. I move that when this committee does arise and report, after having had under consideration Section 13, subsections 1, 2 and 3, as amended, Style and Drafting Report Number 3, it recommend the same be adopted.

CHAIRMAN GRAYBILL: So many as are in favor of adopting subsections 1, 2 and 3 of Section 13 as amended, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: And it's so ordered. Subsection 4 of Section 13.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration subsection 4, Section 13, Style and Drafting Report Number 3, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: No significant changes there; put in "only"—or transposed "only" from one place to another. That's about all.

CHAIRMAN GRAYBILL: Is there any discussion of subsection 4 of Section 13? All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 14, Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 14, subsection 1, of the Style and Drafting Report Number 3, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: There are no significant changes here.

CHAIRMAN GRAYBILL: Any discussion? All in favor of adopting Section 14, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 14, sub. 2.
Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 14, sub. 2, Style and Drafting Report Number 3, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: One note you might want to make and correct on your—our comment on page 22 refers to line 3 here when it should be line 11, just to keep your books in order. Then on line 10, as reported out of the Committee of the Whole, it said "preceding each census", and we inserted the words "federal population census" and gleaned that from the debate on the floor. The rest is all style.

CHAIRMAN GRAYBILL: Is there any discussion of 14, sub. 2? All in favor of adopting it, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed.
(No response)

CHAIRMAN GRAYBILL: It's adopted. 14, sub. 3.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 14, sub. 3, of Style and Drafting Report Number 3, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: There is a possible substantive question here. There was a question in our minds—as the subsection was written, that the first commission should report to the session of the Legislature which appointed it. It seemed obvious to the committee that this was not the intent. For example, if we had a 1979 session and it appointed a commission and we had a 1980 census, which would then report—why, it wouldn't make sense. So we restructured sub. 3 to conform with that thought.

CHAIRMAN GRAYBILL: Is there any discussion of sub. 3? If not, all in favor of adopting 14, sub. 3—
Excuse me, Mr. Harper.

DELEGATE HARPER: I wondered if Mr. Schiltz, when talking about a possible substantive change, might have mentioned their addition of the word "regular session", whereas the adopted section did not say "regular session", possibly allowing for a called session. Now, that may not arise, but it might be a technical thing, whereas just a brief called session might deal with this idea when a regular session might be yet maybe a year off.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I apologize for not noting that. Of course, it is underlined, and I got so carried away with what we'd done otherwise that I didn't note that change. You're right, Mr. Harper. That might be a change. I don't recall exactly what the sense of the debate was on that subject, but I think it—we decided—we did put it in, and we did talk about it and we decided that it should be in there.

DELEGATE HARPER: Mr. Chairman. I move to amend subsection 3 of Section 14 of the committee report by deleting the word "regular" on line 26 so that the sentence reads "the first session".

CHAIRMAN GRAYBILL: Very well. Mr. Harper has proposed an amendment to line 26 of Section 16, sub. 3, striking out the word "regular". Mr. Harper.

DELEGATE HARPER: The reason being simply that the deletion of that word does not really keep regular sessions from handling it but frees the possibility of a special session to handle it.

CHAIRMAN GRAYBILL: Is there discussion? Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman. I'd just like to comment on why the Committee on Style made that change. The reason we put in "first regular session" is, supposing a regular session of the Legislature appointing the commission appointed them and then went immediately into special session. The session—or sentence, as it reads, would then require that the committee—or the commission appointed submit its plan to the special session, and it may give them a very short time in which to prepare the plan.

CHAIRMAN GRAYBILL: Mrs. Bowman. Nothing? Okay. Is there further discussion? All in favor of Mr. Harper's motion to strike the word "regular" on line 26 in sub. 3, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: All in favor of striking it, vote Aye on the voting machines; and all against it, vote No on the voting machines. Vote Aye if you want to strike the word "regular" and No if you don't. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate want to change his vote?

(No response)

CHAIRMAN GRAYBILL: 38 delegates having voted No and 28 having voted Aye, the motion fails. Is there other discussion of subsection 3 of Section 14? Mrs. Eck.

DELEGATE ECK: I wonder if it would be appropriate to move for reconsideration of this, because I think that the delegates don't really understand the implication on the first apportionment. It might put it off so we didn't have single-member districts till 1976 or 1978.

CHAIRMAN GRAYBILL: Say a little more, Mrs. Eck.

DELEGATE ECK: Okay. In our discussion of this, we could see the possibility that the 1973 session appoints a commission to reapportion for single-member districts. If this first Legislature—and we don't know if these are still going to be biennial sessions, but it is assumed that they could be—so that they might not come back and have reported to them the report until 1975, unless they did it in a special session in 1974. If it didn't get reported until 1975, this means that if there were delays, it could be that it wouldn't even get settled by the 1975 filing date and that it wouldn't be for another couple of years; it might be 1978 before we got single-member districts.

CHAIRMAN GRAYBILL: Mrs. Eck, is it possible that the Transition section could suggest to the Legislature earlier times, or is that impossible?

DELEGATE ECK: I think that the Transition—I think it could be settled in Transition if the annual sessions went into effect immediately so that there would be a 1974 session. And there's been some question about this, since the people elected this fall, presumably, are expecting to be elected for a biennial session. You know, I have no idea what's going to come out in Transition, but I think this is where the problem is. I don't think there would be a real problem if we were assured that there would be another session in 1974—a regular session.

CHAIRMAN GRAYBILL: And may I ask another question? If we had stricken the word "regular", would you feel that that would have solved the problem?

DELEGATE ECK: I think so, because I think that in 1974, with all the work there is to do, that if a biennial session does not—I think that they will at least have a special session sometime after their 1973 session. You know, we're loading up a whale of a lot of work for them to do. So that I think there would be time for them to come back with a special session, maybe even before January of 1974. Because even getting it done in January of 1974—well, no, if they got it done in 1974, it would be in plenty of time for the '75 ballot. But there are problems—and then you have the fact that—of course, single-member districts doesn't need to be tied in with unicameralism, but there is the fact that we do have that 1980 referendum coming up, and we might really just be barely launched into a single-member district unicameral system when that referendum comes up.

CHAIRMAN GRAYBILL: Well, the Chair would like to suggest to the body that we have not left subsection 3 of Section 14. It hasn't been adopted yet. If anyone is seriously worried about this, you might again try to strike the word "regular"; and if we vote it differently, that might solve the problem without reopening the whole substantive issue of subsection 3. And if you don't want to try that, why, go ahead.
Mr. Burkhardt.

DELEGATE BURKHARDT: I wonder if Mr. Loendorf would yield to a question.

CHAIRMAN GRAYBILL: Mr. Loendorf?

DELEGATE LOENDORF: I'll try.

DELEGATE BURKHARDT: Jerry, I pushed the red button because you did. And usually I do my own thinking, but your statement sort of colored what I was thinking about. I wonder, in light of this further conversation, if you'd say a little bit more.

DELEGATE LOENDORF: Could you give me a specific question?

DELEGATE BURKHARDT: Well, are we put off till 1978 before this thing can be done with single-member districts, or are we not?

DELEGATE LOENDORF: I don't think so.

DELEGATE BURKHARDT: When can it happen?

DELEGATE LOENDORF: Well, of course, that depends on when the new Constitution goes into effect. As soon as it goes into effect, then the first session thereafter, whether it be a regular or a special session; it seems to me that the Legislature is required to appoint this commission, which has to report back at the first regular session after its appointment.

DELEGATE BURKHARDT: Mr. Chairman. Is it all right to talk like this? I should be asking permission.

CHAIRMAN GRAYBILL: You may ask another question, Mr. Burkhardt, or a series.

DELEGATE BURKHARDT: Are you saying that the commission would be able to go ahead with its plan without waiting 2 years for another session? Is that what you're saying?

DELEGATE LOENDORF: Yes, if the Constitution is adopted, there'll be annual sessions.

DELEGATE BURKHARDT: So the regular session would be coming up immediately?

DELEGATE LOENDORF: Right.

DELEGATE BURKHARDT: I wonder if Mrs. Yeck—Eck would yield to a question, Mr. Chairman. (Laughter) My apologies, Dorothy.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: I yield.

DELEGATE BURKHARDT: We live nearby. We should talk more often, here. Does this satisfy your question, as Jerry has now discussed it, or is it still a problem?

DELEGATE ECK: I think it would satisfy it. It will mean that we will have to be very sure that annual sessions will go immediately into effect when we get it through the transition phase. And I imagine that we'll have a chance to debate and approve that. And I think this is the one question—I think that once you know, once we get launched, there's no problem with the "regular" there.

DELEGATE BURKHARDT: So you would be willing to leave the "regular" in as of now?

DELEGATE ECK: I would really like to leave the "regular" in and make sure that we launch the annual sessions immediately.

DELEGATE BURKHARDT: No further questions, your honor.

CHAIRMAN GRAYBILL: Mr. Skari.

DELEGATE SKARI: Mr. President. We—I drew up a little timetable. We discussed this in the committee. The ratification date would be, of course, in June 1972, and then the next election would be November, 1972. That means, in January, 1973, when the Legislature convened, they could appoint this commission. Now, I suppose this somewhat hinges on when this Constitution takes effect. If this Constitution does not take effect until July 1st of 1973, we might have a problem there with these majority-minority leaders being able to appoint people. But if they could do this in '73, during this session, then I don't think there would be any problem. We would—I would assume that we would have annual sessions starting January, 1974, and the commission could submit a plan then. The Legislature would have—they could submit this plan and have it ready for the opening of that session. The Legislature would have 30 days. And the Secretary of State's office tells me that they have to have a plan, preferably 90 days before the primary election, which is the first Tuesday in June. They could do it with as little as 45 days, but that really cramps them; they prefer about 90. So if this was ready by March 1st or April 1st, I think it would be all right—of '74. Thank you, Mr. President [Chairman].

CHAIRMAN GRAYBILL: Very well. With that discussion in mind, Style and Drafting might think about it in Transition, unless someone has an amendment or motion to make now. Very well. All those in favor of adopting subsection 3, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 15.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 15, sub. 1, of the Style and Drafting Report Number 3, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Minor change in style; no possible change in anything else.

CHAIRMAN GRAYBILL: Any discussion? All in favor of Section 15, sub. 1, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: All opposed. (No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 2.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 15, sub. 2, Style and Drafting Report Number 3, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: There are no changes here at all.

CHAIRMAN GRAYBILL: All in favor of sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed. (No response)

CHAIRMAN GRAYBILL: Sub. 3.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 15, sub. 3, that it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Now, involved in adopting this, because you'll see that there is only sub. 3 here with sub. A's and sub. B's, and so on. But each of those incorporates some language from the bicameral, because this is the section that obtains when and if we've had a unicameral up till 1980 and then adopt—and then the voters choose to go back to the bicameral. And the committee thought that it would be necessary to have all this language in there for use by the people to know what was in the entire article. So I—

CHAIRMAN GRAYBILL: Mr. Schiltz, would it be better to skip to bicameral?

DELEGATE SCHILTZ: That's what I was just going to suggest; except let's take Sections 16 and 17 and then go to the bicameral for Section 15.

CHAIRMAN GRAYBILL: Unless the Chair hears objection, we will skip Section 15, sub. 3, and move over to page 19, to Section 16, on line 21. Is there objection to that? Hearing none, Section 16, on page 19, line 21.
Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having under consideration Section 16, Style and Drafting Report Number 3, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Only style. We'll probably put this section somewhere else in the final draft, because we don't think it's germane to the legislative subject. That comes up another day.

CHAIRMAN GRAYBILL: Discussion? All in favor of Section 16, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 17.

DELEGATE SCHILTZ: I move to amend Section 17 on line 1, page 20, by striking "senators" and inserting in lieu thereof "members".

CHAIRMAN GRAYBILL: All in favor of striking "senators" and inserting in lieu thereof "members", say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed.
(No response)

CHAIRMAN GRAYBILL: So ordered.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 17, Style and Drafting Report Number 3, as amended, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: You will note that this is a complete rewrite, but for style only. This might be relocated, too— No, this one won't be relocated; this is all right here. No, it will be relocated, because it covers all state and local officers and employees.

CHAIRMAN GRAYBILL: Is there any discussion of Section 17? All in favor of Section 17, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed.
(No response)

CHAIRMAN GRAYBILL: And it's adopted. Now we skip to page 1. It's an unmarked page after the brown sheet in your book.

DELEGATE SCHILTZ: It has a number 7 after that, Mr. Chairman—on page 7, after the yellow divider.

CHAIRMAN GRAYBILL: Go to page 7, after the yellow divider. Page 7, after the yellow divider, about six pages in from the back. Very well. We're now considering the bicameral Style and Drafting Report.
Mr. Schiltz, Section 1.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 1 of the bicameral section, Style and Drafting Report Number 3, it recommend the same be adopted.
Mr. Chairman.

DELEGATE SCHILTZ: Only style changes in Section 1.

CHAIRMAN GRAYBILL: Any discussion of Section 1? All in favor of Section 1, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: All opposed.
(No response)

CHAIRMAN GRAYBILL: Section 2.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 2 of the bicameral section of Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman. Once again, only style changes.

CHAIRMAN GRAYBILL: Have you any discussion, Mr. Schiltz?

DELEGATE SCHILTZ: No discussion.

CHAIRMAN GRAYBILL: Very well.
Mr. Aasheim.

DELEGATE AASHEIM: Mr. President [Chairman]. I'm going to move to suspend the rules on Section 2. We have had considerable dissatisfaction voiced in regards to size of our bicameral Legislature; and if this adjustment is made in the bicameral, we will have to reconsider our action on the unicameral, I suppose. But we are tied in here pretty close on this number of the members—100 to 106. Now, remember this, the Legislature shall designate the number of members. This is not the job of the reapportionment commission. So that the Legislature must say how many members there are to be and the commission will then work from that number. Now, it may be that we have here tied ourselves in too closely; and for that purpose I would like to reconsider our action. And I know it's going to open up a can of worms, but I think it's quite important that we do adjust this, because there has been so much dissatisfaction. And I don't have any answer as to the size.

CHAIRMAN GRAYBILL: Mr. Aasheim, let's move to suspend first. I think they've seen your purpose.

DELEGATE AASHEIM: As long as they understand, and as long as it's confined to Section 2; I shall so move, then, to suspend the rules for the purpose of considering Section 2 on page 7 of the Legislative Article.

CHAIRMAN GRAYBILL: And for the purpose of adjusting the size of the membership of the Legislative body therein contained.

DELEGATE AASHEIM: Yes.

CHAIRMAN GRAYBILL: All right. Now, Mr. Aasheim has moved to suspend the rules so that we can reconsider the substance of Section 2 of the Legislative Bicameral Article on page 7, specifically concerning the number or the size of the membership of the bicameral Legislature. This motion takes two-thirds or 51 votes. Is there discussion?

Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman. I'd like to ask Delegate Aasheim just one question.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE McNEIL: What size would he propose if the rules are suspended and this is opened up?

CHAIRMAN GRAYBILL: Just a minute, Mr. Aasheim. I think I'm going to rule the question out of order. The purpose of the motion is to discuss the size. And I don't think we should decide the issue on the motion to suspend the rules. We should either decide to discuss it or we should decide not to discuss it. And therefore I'm going to rule the question out of order.

Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, I have a question too. I concur that we should reconsider the size of the bicameral. It's far too large as it is. But as far as the unicameral is concerned, if we suspend the rules, may we also go back and reconsider the size of the unicameral?

CHAIRMAN GRAYBILL: Well, this motion does not reach the unicameral; it only reaches the bicameral. But by doing the same thing as we're doing here, you could reach the unicameral.

Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman]. I have a question similar to Mrs. Reichert's. Since the numbers that are going to go on the ballot are very important, then may we go on further back and reconsider whether we want them both on the ballot, or settle this issue right here. In other words—

CHAIRMAN GRAYBILL: You may not do that, Mr. Davis, on Mr. Aasheim's motion, since that's not the purpose of it. If you want to make a motion to suspend the rules to consider that, put it in writing and send it up. The purpose—the rule on suspending the rules, which is number 74, requires that the purpose of the suspension of the rules be stated. The purpose of the suspension of the rules we're asking for here now is to consider the size of the bicameral Legislative Article. That's the only purpose.

Mrs. Payne.

DELEGATE PAYNE: May I ask Mr. Aasheim a question?

CHAIRMAN GRAYBILL: You may ask.

DELEGATE PAYNE: Would you, include in your motion, unicameral too? The size of the unicameral?

CHAIRMAN GRAYBILL: Mrs. Payne, he has not so included it.

DELEGATE PAYNE: I'm asking him; would he be willing to include that?

DELEGATE AASHEIM: If that would make a difference, surely. But I thought maybe—

DELEGATE PAYNE: Well, it would make a difference in the way I vote, whether or not you're willing to open up the unicameral and the bicameral to size both now.

DELEGATE AASHEIM: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I started to explain that I will be certainly agreeable to someone making that motion after this. But I was going to see if this would work first before we tried the other one. But if you—if that would make it more palatable—

DELEGATE PAYNE: It would.

DELEGATE AASHEIM: Mr. President, I'll amend my motion to include consideration of Section 2 in the unicameral.

CHAIRMAN GRAYBILL: Section 2, unicameral, is on page 13; Section 2 of bicameral is on page 41—or it's on page 7, it's called here. No, it's not—you must—that must be reference to—unicameral is on page—we just worked it on page 2—or page 10. Section 2, on page 10. Mr. Aasheim, have you amended your motion?

DELEGATE AASHEIM: There are two page 7's in this, I believe. I amended—or I moved to consider Section 2, page 7, of the bicameral article.

CHAIRMAN GRAYBILL: Yes. Are you going to do the same on the other?

DELEGATE AASHEIM: I'm going to find the page here and then I'm going to—

CHAIRMAN GRAYBILL: It's page 10 of the first half of the book. Section 2, page 10.

DELEGATE AASHEIM: And I shall move also to consider Section 2, page 10, of the unicameral article.

CHAIRMAN GRAYBILL: Very well. Now the purpose of the motion has been enlarged to include both the unicameral and bicameral articles for the purpose of adjusting the membership in the Legislative body therein. I have this motion written before the Chair here, as required by the rules. It now reads: "I move to suspend the rules for the purpose of considering an adjustment in the membership of the legislative body, being Section 2, page 10, of the unicameral and Section 2, page 7"—in the back part of the book—"of the bicameral." That's the motion. If I can read this correctly, you're saying, "I move to amend the motion of Aasheim to include reconsideration of"—I can't read that word, Mr. Davis—"As to whether there shall be alternatives on the ballot to unicameral and bicameral." What's the word? Whether there shall be a reconsideration of what?

DELEGATE DAVIS: Mr. President [Chairman]. I believe "of the question" or "fact".

CHAIRMAN GRAYBILL: Of the question? All right. Now, Mr. Davis, the Chair does not believe you have reached anything yet. Mr. Aasheim has no motion. The purpose of a motion to suspend the rules must be specifically stated. At my request this morning, he put it in writing and specifically stated. The purpose of it is the purpose of considering an adjustment in the membership in the legislative bodies. So you can't amend anything he's got, that I can see, to make it broader in that sense. Now, secondly, it does not seem to me that that is the point at which the Legislative proposal reached the issue of whether we're going to have an alternative on the ballot. That was done by a separate motion which this body passed separately. Now, if you want to make a motion to reconsider that, I certainly am not going to stop you. But I don't think you should mix the two unless—because it seems to me that the Chair will have to keep the two separate. One is to—a matter of size; the other is a matter of how you're going to put it on the ballot.

DELEGATE DAVIS: Mr. President [Chairman]. May I make my motion and then speak to it? Then, if you wish to rule me out of order, that would be quite all right.

CHAIRMAN GRAYBILL: Well, I'm going to rule any motion out of order that isn't—until this motion to suspend the rules is taken care of.

DELEGATE DAVIS: In other words, it's your ruling that no amendment can be made to Mr. Aasheim's motion except the amendment someone else just made to it from another section.

CHAIRMAN GRAYBILL: No, that's not what I'm ruling, Mr. Davis. I'm ruling that Mr. Aasheim is making the motion to suspend the rules on a specific purpose. Now, if you want to stay within that purpose and on those sections, you go ahead and make your amendment. But I'm saying that the text that you sent up here raises an entirely different question. And if you want to raise that question, you certainly may; but you can't raise it while we're discussing this other subject. It's like being on another section. Do you follow me?

DELEGATE DAVIS: Just briefly, Mr. President [Chairman]. It seems like—that you have to open that question up too, because we can't blank-check that we're going to put something on the ballot that we don't know what the numbers are going to be. We've passed the numbers and said we'll put it on the ballot. Now, we might come up with some very strange numbers without the possibility of putting them on the ballot, so you couldn't reconsider that issue at the same time.

CHAIRMAN GRAYBILL: The Chair would certainly think that if that happened, you should certainly make a motion to suspend the rules to reconsider whether it goes on the ballot. But it doesn't seem we're at that point yet. I see two issues: one, the numbers; and one, whether it goes on the ballot. You certainly may raise yours, Mr. Davis, but I think the Chair is going to rule that you have to be somewhere within—have to be talking about the two Section 2's that he's talking about here. That isn't going to reach the issue you've decided—you've raised. So I'm perfectly happy if you do it, and I'd suggest you read Section—Rule 74 so that you get your purpose stated right. And I'd be happy to have you do it, but I think I'm going to rule that we can only do one at a time. Now, if you want to amend Mr. Aasheim's motion on the specific point of numbers, fine. Is there other debate?

Mr. Brown.

DELEGATE BROWN: Mr. President [Chairman]. I rise in support of Mr. Aasheim's motion. I've heard a great deal of concern about the size; but more important, people that are very experienced in reapportionment say that we're in grave danger by the narrow range of members. So I think it's vital that this body supports Mr. Aasheim.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: I rise to support Delegate Aasheim in his motion to suspend the rules. This week, in my area, we found there was a lot of resentment on the numbers—that were too high. They asked us to do everything we could to reconsider them. I think that—well, I know that I voted for them. I regret that decision now, and I certainly would appreciate the opportunity to reconsider this matter. Thank you.

CHAIRMAN GRAYBILL: Is there further debate on the issue of suspending the rules?

Mrs. Bates.

DELEGATE BATES: Mr. Chairman, I'm just wondering. If we open this for reconsideration, how many more of the articles will we be opening? And how many more will we then feel we have to give the other delegates the same courtesy? And it is true, at the time the Legislative Article was passed, I was—felt rather disappointed. But in evaluating the entire article, there are many reforms. And I feel quite satisfied with the article, even though I do not agree with all of it. But I'm just wondering: are we going to—if we go ahead on this reconsideration, are we then going to give each person that wants the same right to reconsider all the other articles the same opportunity? I feel we may be here for many extra days if we do.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman and fellow delegates. I think that we have to weigh very carefully the merits of whether we're going to take this extraordinary action in suspending the rules. And if we set a precedent for suspending the rules in this case, well, I think that it's only fair to realize that other issues that come up at this stage are—also warrant similar precedence of suspending the rules. Now, I personally was very happy with the way the size of the—came out; but I think that everyone has to weigh carefully whether, in fact, we want to open up these questions again. We spent lengthy debate on trying to resolve the numbers for both of the articles—sections of the article, and I think that for us to go back again and open up this whole question is unwise. And it's simply a matter of being consistent; and I think that we will be setting a precedent which we may regret later on. Thank you, Mr. President [Chairman].

DELEGATE HOLLAND: Mr. President [Chairman], fellow delegates. I've kept careful note, and Mr. Foster and I have disagreed on everything so far. And I'm rising in support of just what he's just said. This Convention has deadlines to meet. We've got, as I figure it, approximately two weeks. This matter—I'm not like Mr. Foster; I'm not happy with the numbers. But this Convention has got to handle its business expeditiously. The matter, as I remember, was hard-fought on the floor, fully debated. We resolved it; now we're coming back, not for a new proposition, but to hash over the same old thing. It should have been covered on reconsideration. If we open it up, we're going to be opening up on everything that has been won or lost by various delegates here. I strenuously urge this group to reject this motion to suspend the rules because we're going to—if we do it on this, we're going to be doing it on every critical item in this Constitution we've already resolved.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman. I rise to support the motion to suspend the rules for this purpose. I think the people who are saying that we're going to open this up for everything aren't really stopping to consider the fact of just how important this issue really is. This is one of the places where the people at home have really come out and said to me, on my weekends home, that that's too many. "We want real representation; but let's not get this thing so far out of hand, and have it locked in, that we regret it." And I feel we're going to make a very serious mistake if we don't go along and open this up again and do a job for the people.

CHAIRMAN GRAYBILL: Will those who are not—

Mrs. Erdmann. But before you speak, would those who are not speaking please try to sit down when they're not busy. It's hard for the Chair to tell who's up.

Mrs. Erdmann.

DELEGATE ERDMANN: Mr. President [Chairman]. I support Mags Aasheim in his request for reconsideration—I mean, suspension of rules. I think this is a very vital matter, and I believe that it shouldn't take too much time. But I think we should allow anyone who is convinced that it is a vital significance—I think we should extend them that courtesy; and then you can dispense with it with a vote, Yes or No.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Aasheim's motion to suspend the rules for the purpose of considering an adjustment in membership of the legislative body in Section 2, on page 10, of the unicameral and in Section 2, on page 7—the back part—of the bicameral article. So many as are in favor of Mr. Aasheim's motion to suspend—

DELEGATE AASHEIM: May we have a roll call vote?

CHAIRMAN GRAYBILL: All right. It'll be a roll call vote. So many as are in favor of suspending the rules, vote Aye; and so many as are opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the ballot.

Aasheim	Aye
Anderson, J.	Nay
Anderson, O.	Absent
Arbanas	Absent
Arness	Nay
Aronow	Nay
Artz	Aye
Ask	Nay
Babcock	Aye
Barnard	Aye
Bates	Aye
Belcher	Absent
Berg	Aye
Berthelson	Aye
Blaylock	Aye
Blend	Aye
Bowman	Aye

Brazier	Aye
Brown	Aye
Bugbee	Aye
Burkhardt	Aye
Cain	Aye
Campbell	Aye
Cate	Aye
Champoux	Absent
Choate	Aye
Conover	Aye
Cross	Aye
Dahood	Aye
Davis	Nay
Delaney	Nay
Driscoll	Aye
Drum	Aye
Eck	Aye
Erdmann	Aye
Eskildsen	Absent
Etchart	Nay
Felt	Aye
Foster	Nay
Furlong	Aye
Garlington	Aye
Graybill	Aye
Gysler	Aye
Habedank	Aye
Hanson, R.S.	Aye
Hanson, R.	Nay
Harbaugh	Aye
Harlow	Nay
Harper	Aye
Harrington	Aye
Heliker	Aye
Holland	Nay
Jacobsen	Aye
James	Aye
Johnson	Aye
Joyce	Aye
Kamhoot	Nay
Kelleher	Nay
Leuthold	Aye
Loendorf	Aye
Lorello	Aye
Mahoney	Nay
Mansfield	Aye
Martin	Nay
McCarvel	Aye
McDonough	Aye
McKeon	Aye
McNeil	Aye
Melvin	Aye
Monroe	Nay
Murray	Aye
Noble	Aye
Nutting	Absent
Payne	Aye
Pemberton	Nay
Rebal	Aye
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Nay
Romney	Absent
Rygg	Nay
Scanlin	Aye
Schiltz	Aye
Siderius	Aye
Simon	Aye
Skari	Absent
Sparks	Aye
Speer	Aye
Studer	Aye
Sullivan	Aye
Swanberg	Aye
Toole	Aye
Van Buskirk	Aye
Vermillion	Nay
Wagner	Nay
Ward	Absent
Warden	Aye
Wilson	Absent
Woodmansey	Aye

CHAIRMAN GRAYBILL: Mrs. Bugbee, for what purpose do you rise? Mrs. Bugbee's button please, Rosemary. No, push her button so she can talk, Rosemary. (Laughter)

DELEGATE BUGBEE: Mr. Chairman, I just want to be put down on the record as being present. I did vote.

CHAIRMAN GRAYBILL: Oh, all right. Will the journal show Mrs. Bugbee's presence. Very well, take the vote.

CLERK HANSON: Mr. Chairman, 69 voting Aye, 21 voting No.

CHAIRMAN GRAYBILL: 69 having voted Aye and 21 voting No, and 69 being over both two-thirds and 51, the motion is adopted. The rules will be suspended for your purpose, Mr. Aasheim. You have the floor.

DELEGATE AASHEIM: Mr. President [Chairman]. I want my motion to read: "I move to amend Section 2 of the Legislative Article, being page 7 of the back section." I'm going to make a motion for size and you can start from there.

CHAIRMAN GRAYBILL: All right, Mr. Aasheim. Just a moment now. You have to move to reconsider it, right?

DELEGATE AASHEIM: Well, I was trying to get away from that motion.

CHAIRMAN GRAYBILL: No, I think you have to move to reconsider it. Are you on the prevailing side?

DELEGATE AASHEIM: Yes, I was.

CHAIRMAN GRAYBILL: All right, now, go ahead, saying—put that in your motion, "Being on the prevailing side"—

DELEGATE AASHEIM: Having been on the prevailing side—well, I think I was—I can't—I moved—I was on the prevailing side to adopt the section, I'm sure.

CHAIRMAN GRAYBILL: Very well.

DELEGATE AASHEIM: Having been—voted on the prevailing side, I move to reconsider our action in adopting Section 2 of the Legislative Article of the bicameral section, being page 7 of our bicameral section.

CHAIRMAN GRAYBILL: All right. The motion is—I think we have to take this a step at a time, Mr. Aasheim. The motion is to reconsider the bicameral article, on page 7 in back of the books that you're looking at, Section 2. And, of course, the purpose is the same; to change the—adjust the membership. So the motion of Mr. Aasheim is now to reconsider Section 2, on page 7, of the Legislative Article for the purpose of considering an adjustment of the membership. So many as are in favor of that, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted. Now, Mr. Aasheim, do you want to make your proposal?

DELEGATE AASHEIM: Mr. President [Chairman]. I'm open to suggestions here. I'm—as you know, my original proposal—my original recommendation was for a 40-80 legislative body. And I'm being realistic. I realize that we have areas here who are going to be unhappy with a small Legislature and we have areas who are going to be unhappy with a large one. So I'm going to make this motion that we—on page—on line 14 on page 7, insert in place of "53", "50" and in place of "50", "45". And on line 15, in place of "106", "100"; and in place of "100", "90". I'm not so naive as to say that you're going to adopt this without talking, so the floor is yours.

CHAIRMAN GRAYBILL: Very well. Mr. Aasheim moves to amend the bicameral Section 2 size article by making the size of the Senate 50 and 45—maximum 50, minimum 45—and the size of the House, maximum 100, minimum 90. Is there discussion?

Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman]. I apparently made the original motion that was so ill-advised at the time. However, we've come quite a ways since that time. We've really got a pretty clear-cut situation. Now, Mr. Aasheim's motion you couldn't live with, but does it really change anything that much? If you really want to cut it down, you could cut it down to half or something, but he knows that you've got to have representation. Yesterday—or Saturday, we passed the Revenue and Taxation bill. We said everything is going to be taxed by the state and it's going to be worked out by a little—legislative group, and we're going to determine the size of this legislative group. And somebody is going to have some taxation without too much representation. There is the geographical problem you've got in this big state. You've got five counties in many districts right now. You can look around this body of a hundred seats and say, "Which ones do we want to eliminate?" Now, I mean not the individuals personally, or else there would be a lot of volunteers for that, but which area do you want to eliminate or consolidate? We've got the anti-diversion of highway funds. I imagine everyone heard about as much discussion over the weekend of that as they did size of the legislative body. Three-fifths can change it. If you cut that number down, that really consolidates the power in a lesser number of people. And that's what you're really—maybe driving at. You got your state indebtedness limitations we talked about in this Constitution. Now, you're going to cut that down to a lesser number of people that have a right to have a representative up here, or covering a much larger area. You really are trying to get—you must be careful not to get in a situation of taxation without representation, I think, in all these areas.

We passed the environmental program. That's left to the Legislature to implement. How big a Legislature do you want? I know, depending on which side you're on, you might want to knock out many different areas. The reclamation is left solely up to the Legislature. You want a broad spectrum in this Legislature to let everybody be heard; or do you want it to be small? The water rights—what's beneficial use for recreation, domestic, municipality? That's left solely up to the Legislature. What size Legislature? Do you want it to be truly representative of Montana, or do you not? The court—the Legislature is also going to have something to do, approving its own size. So if you have a smaller body, they can meet in the first session, depending on the complexion of the Legislature. We don't know. They can cut it down in the guise of economy, to cut it down the first go-round. I think the biggest argument on it is right now. If this Constitution should pass, you have a Legislative Assembly of 100 in the House, 50 in the Senate that's been—met the test of the federal court. We could go ahead, without spending all this time fighting another reapportionment bill, and do all the other jobs we're assigning to the Legislature without starting right off and spending all their time trying to adjust what size they're going to be—spend all the time on that. They spent a large part, and a lot of effort went into that at the last Legislature, and they came up with the size that we're sitting on right now. And now you say this size isn't any good. A lot of people—and I realize and certainly respect the differences of opinion on this, because I know they're real sincere. But this is the size you're going to get if they defeat this whole Constitution. We're right back with the hundred that's met the court test in the House and 50 in the Senate. Now you—I don't think you're going to be able to take away from the people their local control of taxation and put it in a board with the state. I don't think you're going to take away all these debt limitations they've had all the time. I don't think you're going to let them dip into the highway funds, after they've voted the antidiversion bill, and then at the same time say, "Well, we're not going to let you get back in there too far. We're going to cut down the representation too"; and then you're really creating a lot of power in a few people. I think, if it comes to the choice on the ballot—naturally, you want a smaller size to make it appealing. And I think the unicameral on the bicameral legislative fight in this body, they're both trying to make their article appealing so they can pass the cause they're championing. And they're trying to do it at the expense of the people of Montana, to keep them from getting fair representation. And as I said before, I don't care which they adopt, but we should have fair representation and go about it on the merits. And I submit that if you cut it down to less than a hundred and less than the 50 in the House—or a hundred in the unicameral, you have now—you're not going to give representation in this great State of Montana that's divided by rivers, mountain ranges, all sorts of different problems. The little towns have different problems than the big towns. The little ranches have different problems from the big ranches, little industry competing with big industry. We have a complex of problems that deserves and justifies any expense you would have with the little difference it would make in the number of people that this amendment would make. Thank you.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President [Chairman]. I have a great deal of respect for Mr. Davis' feelings on this thing. I know that, as he has said of us, that we're sincere on this. I know that he is sincere. I think I should say, at this time, that I'm very much interested in seeing the bicameral proposal passed. And insofar as he has said that we're championing our own cause—and, at least in my respect, this is true. And I believe that if we do have somewhat smaller numbers on this bicameral proposal, then—that we will have an easier job of selling it and championing the cause of the bicameral system, and continuing the bicameral system here in Montana. I do think, Carl, that if we can keep the bicameral system, then certainly we do have, with our Senate—we have the Senate, then we have that body of men over there who will continue to represent the areas of Montana and would provide more representation and more thoughtful consideration to some of these issues that you have raised that we have already put into the Constitution. So I support Mr. Aasheim's motion to accept this. I certainly do want to keep a floor on this. I don't want to ever have it where the Legislature can lower this down so far that we really do strip the rural areas of Montana from representation. But I think that having it from 45 to 50 on the Senate side and from 90 to a hundred does represent a good compromise, and these are figures that will be easier to sell to the people of Montana. So I support Mr. Aasheim's motion.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman. I, too, support Mr. Aasheim's motion. I feel, too, that we need adequate representation, and I feel this will give us a continued adequate representation. Thank you.

CHAIRMAN GRAYBILL: Mr. Etchart.

DELEGATE ETCHART: Mr. Chairman. I support a smaller bicameral Legislative Assembly, but I would like to further amend Mr. Aasheim's motion by deleting his numbers "45" and "90" and inserting in lieu thereof "40" and "80".

CHAIRMAN GRAYBILL: You're making it "50" to "40" and "hundred" to "80", is that right?

DELEGATE ETCHART: Yes, sir.

CHAIRMAN GRAYBILL: All right. Mr. Etchart has proposed an amendment of Section 2, or actually to Mr. Aasheim's amendment, which would lower the bottom numbers to 40 and to 80. In other words, the House would be 80 to a hundred and the Senate would be 40 to 50. Is that right, Mr. Etchart? Do you wish to discuss it?

DELEGATE ETCHART: Yes. I think that, really, if we're going to make a significant change, just changing 50 to 45 keeps us in a pretty narrow range. And I think if we drop it down to 40, this would be an 80-member House, 40-member Senate, 120-member Legislature; to me, this would be a pretty attractive size bicameral body, especially when we combine it with our single-member districts concept which we've already adopted. And I think—I personally am quite in favor of the bicameral system, and I would like to see the most attractive bicameral proposal come out of this body. Incidentally, I have heard that this was the committee report, 40 and 80, and I believe this would be a very fine number.

CHAIRMAN GRAYBILL: Mr. Ask.

DELEGATE ASK: Mr. Chairman. I rise in opposition to both Mr. Etchart's and Mr. Aasheim's proposed amendment reducing the number. Let's stop and look at this to our rural areas. It's not just the numbers; it's how you're going to make up this area. And when you go—say you take—have 80 House of Representatives—80. You're going to take 20 off of what we have now, so how are you going to reapportion that? You're going to have to take these areas and attach them onto an urban or city near you, or you're going to have districts running 500 miles long to stay in the rural areas. I say that the rural areas of Montana are going to completely lose representation on this proposal, either one of the numbers. Now, before reapportionment we had 56 senators, and there weren't too many complaints about that. We used to have a hundred and four in the house here; I never recall any complaints. Just because we're going to have annual sessions is no sign it's going to cost that much more money to have a larger bicameral Legislature. And I submit if we go at least to this last reduced number here, we're—the rural parts of Montana are going to completely lose any representation, because they are going to have to be attached to a urban area near them; and who's going to get elected? But it'll be someone from the larger cities in this particular area. I therefore strenuously oppose these changes in the numbers.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I sent a proposed amendment up to the Chair. Is it in order?

CHAIRMAN GRAYBILL: Well, if I read it correctly, it refers to page 10, which is the unicameral article, which we are not debating now. We're debating the bicameral.

DELEGATE JOYCE: Well, I just thought we were debating both of them. I thought his motion to reconsider—

CHAIRMAN GRAYBILL: No, we're only debating page 7 of the—

DELEGATE JOYCE: In any event, may I propose this amendment—or substitute motion to all motions pending then? I haven't got it in writing, of course.

CHAIRMAN GRAYBILL: All right. I have it up here. You want to amend Section 2, on page 7.

DELEGATE JOYCE: Let's make it, instead of 7, whatever the bicameral is.

CHAIRMAN GRAYBILL: That's the bicameral, my friend. There's a second page 7 back of the yellow sheet here. Okay? Can you find it?

DELEGATE JOYCE: Yes.

CHAIRMAN GRAYBILL: Now, the trouble with your amendment that you sent up—the numbers that you sent up don't appear there. Why don't you tell me what you want to do to Section 2.

DELEGATE JOYCE: All right, here's what I propose to do. I propose to amend Section 2 to provide that the size of the Legislature—I'm reading the section as it currently is—"shall be provided by law, but the Senate shall not have more than 53 nor fewer than 50 members and the House shall have not less than 106 nor fewer than 106 members". [sic] And then I propose to add the following language: "until the year 1982, and after which time the size of the Legislature shall be provided by law, but in no event shall be fewer than 80 members of the House nor 40 members in the Senate." May I speak to the—

CHAIRMAN GRAYBILL: All right. First of all, I want it written out and sent up, Mr. Joyce.

DELEGATE JOYCE: May I ask the Chair a question?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE JOYCE: What's your plan? It's 12 o'clock noon. I mean, are you—

CHAIRMAN GRAYBILL: Well, my plan is to debate this article. Let's go. I see what you want to do, and I'm going to let you do it, but I just cannot—we're talking about substance here, and the Chair must have in writing what you people intend to do. Otherwise, these things never get into the journal. Now, the Chair is going to accept an amendment from Mr. Joyce, and I must put the amendment before we discuss it.

For what purpose do you rise, Mr. Felt?

DELEGATE FELT: Well, I thought while we were waiting for that to come up, that I could squeeze in a few comments on the previous motion and save—

CHAIRMAN GRAYBILL: No, you're out of order.

DELEGATE FELT: All right. I didn't know you had received the other motion yet. That's fine.

CHAIRMAN GRAYBILL: I'm sorry, ladies and gentlemen, but I think we must take these things a step at a time. And we have three motions up, and unless I have them here, it gets very difficult. And we'll certainly quit after awhile, but let's see if we can't at least adjust one or two of these items and get the sense of the body before we have lunch.

Now, Mr. Joyce, is this—you want this to be—replace Section 2, is that it?

DELEGATE JOYCE: Yes, sir.

DELEGATE GRAYBILL: Mr. Joyce makes a motion to delete Section 2 in its entirety—this is bicameral—and put in place thereof the following: "The size of the Legislature shall be provided by law, but the Senate shall not have more than 53 nor fewer than 50 members and the House shall not have more than a hundred and six nor less than a hundred members until after 1982. And thereafter, the size of the Legislature shall be set by law at no less than 40 members of the Senate and 80 members of the House." The purpose of this amendment appears to be to leave the present numbers in until 1982; after that, to leave it up to the Legislature, with a floor of 40 and 80 in the bicameral article.

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. When—we debated this at length the other night and I spoke in favor of Mr. Davis' motion to set these figures as were finally adopted by the assembly. His theory was that unless the size—We're submitting to the people the issue of whether they're going to have unicameral or bicameral, and no one now knows how they're going to decide that. And further than that, we are adopting the theory of single-member districts, and nobody knows how the single-member districts are going to be arrived at. So therefore we're completely in the dark as to how the size and shape of the Legislature is going to be hereafter. And his—the reason for his amendment, as I understood it, was to at least make the unicameral if we're going—or the situation large enough so that the rural people would have a chance to have representation in the Legislature if we adopted the bicameral system. And it seems to me that until such time as we know the answers to how the state is going to be apportioned under the single-member districts, that if we leave them at this figure until after the year 1982, when the state is reapportioned again and the people have—if they vote unicameral, they may vote it out and have bicameral. At any rate, at that time the people will then have some idea as to how the Legislature is going to be apportioned, and thereafter, it could be reduced. And Mr. Davis' point, as I understood it in talking with him—and why I spoke in support of his motion the other evening—was that presenting a small bicameral proposal to the people of Montana would compel the rural people to vote for unicameralism so that they'd have a sufficient number to have some voice in the state government. And he wanted to give the rural people a fair chance to still vote for bicameralism and have a sufficient size Legislature so that they would have some representation until such time as they see how the single-member districts were going to be adopted. And he poses a very real problem, it seems to me: if you make the size of the Legislature small, then necessarily, you must have more people per representative. And he lives in a large county in size, small in numbers; that's adjacent to the county in which I live. And he just feels that to—if the situation arises where his county gets lumped in with a portion of our county, that that would present a real problem for his people ever having a representative. And it isn't a situation peculiar to Beaverhead and Silver Bow; it applies also to those counties in eastern Montana where there are sparse population and they are adjacent to a metropolitan center. And so, it seems to me, or at least I submit it to the benefit of the delegates, that until the year 1982, this might be a reasonable compromise. We would then see whether or not we're going to have a unicameral system and whether it's going to be adopted. And we would also see how the single-member district system worked; and then, after the year 1982, then the people of Montana, acting through their Legislature, could reduce the size of the Legislature if they so desired, and they would have some experience on which to draw. And that's why I offered the substitute motion.

CHAIRMAN GRAYBILL: Very well. The question arises on the—

Mr. Wilson.

DELEGATE WILSON: Mr. President [Chairman]. I rise in opposition to Mr. Joyce's motion. Perhaps I should be the last one to get up here and make any mention of numbers as far as rural areas concerned, because this is exactly what I represent. But in the discussions that followed the adoption of this proposal the other day, we came to the conclusion that we were not providing sufficient alternatives for the people to consider, as far as numbers is concerned. I think that we can all agree, at the present time, that you have representation of 50 senators and a hundred representatives. And for all practical purposes, for the next session or two, that's exactly where it will stay. But at the same time, we must consider an alternative proposal that will allow the people to consider this when they're considering unicameralism versus bicameralism. This will give them enough option that they can look into the future and see where, if it is desirable, they can move the numbers down if they see a sufficient necessity to do this. But if we don't move our numbers and give greater flexibility for the voters, I don't think we're providing a fair alternative to the voters to decide on between unicameralism and bicameralism. Thank you, Mr. President.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. President [Chairman]. I rise in support of Mr. Etchart's motion and opposition to Mr. Joyce. As far as the remarks of Delegate Ask and Delegate Davis, if they want a hundred members and 50 senators, they can have them; but we're now telling future generations that if they want to cut down, they can't. And we're writing this Constitution—or I hope we are—to be flexible. And if they want large bodies, they can have them; but if they want to shorten this down in the future, they can do it. And I agree with Mr. Wilson that we should give the people a choice in the future. So I ask this body to support Mr. Etchart and put flexibility into this Constitution. Thank you, Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. I support the amendment of Mr. Joyce, not because I'm enamored with it, but because it gives us an opportunity to avoid the horrible alternative of the Etchart—and I don't remember who are the others—alternative. Mr. Chairman, I tell you that if we have Legislatures the size envisioned in those amendments of Mr. Etchart and the other one, people in the smaller counties are not going to have any representation. We're going to—the big—it doesn't make so much difference in the big counties or big districts where the population is large in the cities, because they will continue, whether you have small or large; they will have proportional voice. But if you go—whereas if you have a large Legislature, the people in the rural areas will have a voice. If you cut down the size, we're going to have the people in the smaller, rural areas—we're going to lose our—everything excepting the squeak. We won't have a voice. And I don't like to see that. I think this was a terrible mistake, to bring this back. It's apt to cause us to be bringing back things all through the remainder of the session. I think it was discussed thoroughly once and decided. And now we find out this decision is overturned. What if we would want to bring back some other things, like the probate and the ombudsman and various others? And if we start bringing those matters back and cause all sorts of discussion, we may not have enough time.

CHAIRMAN GRAYBILL: Mr. Romney, you're debating the issue of whether or not we should have reconsidered. I'd be glad to have you continue debate, only the matter of the numbers, please.

DELEGATE ROMNEY: I was endeavoring to show the ramifications of this nefarious situation. (Laughter)

CHAIRMAN GRAYBILL: One ramification is you're going to be out of order unless you stick to the point. (Laughter)

DELEGATE ROMNEY: In view of this situation, I'm unable to discuss the matter thoroughly. I will vote for the Joyce amendment because I'm handcuffed to it. I want to go back to the other original decision of the Convention.

CHAIRMAN GRAYBILL: Very well. Ladies and—
Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman]. I haven't spoken to the Joyce amendment. I would support Mr. Joyce's amendment as an attempt to make a reasonable compromise in here. Mr. Joyce—I would like to clarify the fact he said it would—he thought my thinking was it would compel people to vote for the unicameral. My thinking is it would compel people to vote against the Constitution. They've got a hundred now; they've got representation now; they've got their own local taxation now; they've got so many reasons why, that this change is going to be very difficult. If you say, "We're going to cut your numbers out; we're not going to tell you which one's going to go; we're going to leave that up to the next Legislature." And they know very well the cities control the votes in the State of Montana—seven cities have 50-some percent of the vote. Let's face the fact. And these people are going to say, "Well, these seven cities can go up and, depending on who they elect, they can cut the number down." And that's why I think we should have a floor. I think you've got to be realistic on this. As I said before, we want to get some harmony throughout the state. We don't know what will be, and I agree on the flexibility thing. But I would support Mr. Joyce's amendment to keep them from fiddling with these numbers for the next 10 years—if they pass this thing with all the things that we've left for the Legislature to do, so they don't have to continually try to reapportion themselves until after the next census is taken, and then they can go ahead and make the adjustments. Thank you.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman. I think that we also have a good number of voters in the state who are concerned about maximum size. And as I understand it, Mr. Joyce's amendment states that after 1980—or '82—whenever it is—there will be no maximum size. I think this would terrify a lot of voters, because the tendency has always been to increase rather than to decrease these bodies. Thank you.

CHAIRMAN GRAYBILL: Very well. Members of the body, the issue is on Mr. Joyce's substitute amendment. It reads as follows: "The size of the Legislature shall be provided by law, but the Senate shall not have more than 53 nor fewer than 50 members and the House shall not have more than a hundred and six nor less than a hundred members until after 1982 and thereafter, the size of the Legislature shall be set by law at no less than 40 members of the Senate and 80 members of the House." Do you want a roll call? No. I'm sorry, Mr. Joyce, you can't close. You've closed. Very well. So many as shall be in favor of the Joyce amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it, and so ordered. Now we're debating Mr. Etchart's motion that the range in the Senate in the bicameral be 40 to 45—no, that the range in the Senate be 40 to 50 and the range in the House be 80 to a hundred. Actually, he amended Mr. Aasheim's motion to lower the minimum to 40 for the Senate and to 80 for the House. That's Mr. Etchart's amendment, and that's what we're going to debate now. Is there further discussion?

DELEGATE DAVIS: I'd like a roll call vote.

CHAIRMAN GRAYBILL: Mr. Davis wants a roll call vote. All right. The issue, then, is on Mr. Etchart's amendment to lower, in the Senate, the minimum to 40 from 45 and, in the House, the minimum from 90 to 80. This is the minimum only. Mr. Etchart's amendment to Mr. Aasheim's amendment.

Mr. Foster, for what purpose do you rise?

DELEGATE FOSTER: Can I speak on the motion?

CHAIRMAN GRAYBILL: Well, you didn't—

DELEGATE FOSTER: I rose prior to the time—

CHAIRMAN GRAYBILL: All right. Cancel the vote out, Mr. Clerk. You may speak, Mr. Foster.

DELEGATE FOSTER: Mr. Chairman. Well, I think this is an extremely important question that's before this body. For one thing, the broad range is desirable for purposes of—for determining the number of legislators to be chosen. But at the same time, I think you should realize that there will be those in the course of the election which is before us that will use the lower limits for their advantage and there will be those that will use the higher limits for their advantage. Now, let me point out that in the rural areas, people are going to look at that 40 at the bottom and they're going to say, "Now, what is this going to do to the Senate?" And I'm speaking directly, now, to the senator that happens to be representing that present district. And he will be inclined to look at what it's going to do to his particular chances for reelection, and his voice to the people will be dependent upon that point. And I submit that, in most cases, the people that are looking to a larger district to run for are going to be opposed to this size. There will be others who will say that, in fact, you have a limit of a hundred and fifty—which is essentially what we had before—that'll say the Legislature is going to keep it at the upper limit. They will use the same argument that is presently being used; essentially, you haven't changed the size at all. Now, I think that what we've done, in going to this amendment, is essentially taken the worst of both proposals. We've got those that are going to be concerned because the body is going to be too small, they're going to lose representation; and we still have those that are going to be concerned because it's too large, it's going to be expensive. And I submit that we really haven't improved anything; in fact, we have made it worse by giving this broad limit for the size. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there other discussion?

Mr. Felt.

DELEGATE FELT: Yes, Mr. Chairman. I am rising to support the amendment of Mr. Etchart and also the original motion of the Chairman of the Committee on the Legislature, Mr. Aasheim. The present situation is, I think, that we have 23 senatorial districts. With the amendments proposed and with the single-member district feature, we would have 40 at the minimum and we could have 50. So that as far as people from rural areas are concerned, I think they would find that, by and large, they would have more people living in a rural setting, making their own living from that type of activity, than they are likely to have at the present time. The House membership has been set at 100 by the last Legislature, and it was under that proceeding, which was approved by the court, that we were able to be elected. As I recall, the court did not, however, state that they would necessarily approve it for a legislative session, but that due to the short period of time available, they did approve it for purposes of proceeding with this election. I think we should keep in mind that the basic purpose of the committee that worked so hard on this was to devise the very best type of bicameral legislative body and the very best type of unicameral legislative body that they were able to develop—and I think they did a fine job—and that we did—and our departure from their report have somewhat weakened both; but here we have a proposal by the Chairman of that committee, who referred to the fact that his actual first choice were these minimum figures of 40 and 80, but he did not feel that it was expedient to make the effort for that size, so he phrased his motion as he did. But it is now in our power, if we wish to accept this amendment, to go along with what, I believe, he would have considered to be his own druthers if he could have them, and we have the maximum sizes which are reasonable. And I'm very hopeful that all of us, not thinking of ourselves as representing either urban or rural interests but recognizing that each do have legitimate interests, will try our best to present this to the people in such a way that they are being offered the very best possible bicameral legislative structure and the best possible unicameral. I think that we are getting toward that, and I hope that the amendment of Mr. Etchart and the motion of Mr. Aasheim will both be accepted in that light. Thank you.

DELEGATE BATES: Mr. Chairman. I rise in opposition to Mr. Etchart's motion and support Mr. Aasheim's. I feel that a body of 40 is not an adequate number to even staff the committees that are necessary in a working body; and in order to assure adequate representation to our rural areas, I support Mags, and not Mr. Etchart's. Thank you.

CHAIRMAN GRAYBILL: Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President [Chairman] and fellow delegates. We already, in our Constitutional Convention, districted to 23 districts. Why not 46 senators and 92 legislators, without leaving it to a new Legislature to decide what size they're going to be? Set it at 46 and 92. It would be a little less than what we're talking about and a little bit more, in some respects, than what we're talking about. Thank you.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman. I'm going to support Mr. Etchart's amendment now, and then if that fails, support Mr. Aasheim's. But I think that there's one thing that all of us from the rural area should recognize and think about. As Mr. Davis has said, regardless of what happens numberswise, some towns in this state can control it. I had hoped that by the time we got the Convention this far, that some things would have happened that haven't as yet happened. But I am sure that, at a meeting coming up pretty soon, all of the farm groups organizations in the State of Montana, for the first time, are going to start getting together on some things. And one of these things is what the rural people, the agricultural people of the State of Montana, should have been doing for a long time, and that is letting the people in the cities and the urban areas know that there are a lot of farm dollars being circulated in this state. I feel that when this is worked out with the farm groups and when this kind of a promotion starts, for the first time in many a year that we in the rural areas aren't going to have to worry about being outvoted by the people in the cities. When the people in the cities can walk down their streets on a Saturday or any day of the week and find out how many rural people they have in their town, they're going to recognize where an awful lot of the economy of the State of Montana comes from. And I'm certainly not worried about going to the bottom of 40 and 80 and the maximum of 50 and a hundred as we have right now. I think this 50 and a hundred we should keep, because this is what it is. But unless the people in the rural areas get together and do things like I hope the farm organizations will start on next week or week after when they have their meetings, we're dead sunk no matter how many members we have in there. So I support this Etchart amendment to start with.

CHAIRMAN GRAYBILL: Very well. Members of the body, you have before you Mr. Etchart's amendment to lower the Senate minimum to 40 and the House minimum to 80; that's from 45 and from 90. We want a roll call vote. So many as shall be in favor of Mr. Etchart's amendment, please vote Aye on the voting machines; so many as opposed, please vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate want to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please tally the vote.

Aasheim	Aye
Anderson, J.	Nay
Anderson, O.	Nay
Arbanas	Absent
Arness	Nay
Aronow	Nay
Artz	Aye
Ask	Nay
Babcock	Aye
Barnard	Nay
Bates	Nay
Belcher	Absent
Berg	Aye
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Aye
Brazier	Aye
Brown	Aye
Bugbee	Aye
Burkhardt	Aye
Cain	Aye
Campbell	Aye
Cate	Aye
Champoux	Absent
Choate	Aye
Conover	Nay

Cross	Nay
Dahood	Aye
Davis	Nay
Delaney	Nay
Driscoll	Absent
Drum	Aye
Eck	Aye
Erdmann	Aye
Eskildsen	Absent
Etchart	Aye
Felt	Aye
Foster	Nay
Furlong	Aye
Garlington	Aye
Graybill	Aye
Gysler	Aye
Habedank	Aye
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Aye
Harlow	Aye
Harper	Aye
Harrington	Aye
Heliker	Aye
Holland	Absent
Jacobsen	Aye
James	Aye
Johnson	Aye
Joyce	Nay
Kamhoot	Nay
Kelleher	Absent
Leuthold	Aye
Loendorf	Aye
Lorello	Aye
Mahoney	Aye
Mansfield	Aye
Martin	Nay
McCarvel	Nay
McDonough	Nay
McKeon	Aye
McNeil	Aye
Melvin	Aye
Monroe	Nay
Murray	Aye
Noble	Aye
Nutting	Absent
Payne	Nay
Pemberton	Aye
Rebal	Aye
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Aye
Romney	Nay
Rygg	Aye
Scanlin	Aye
Schiltz	Aye
Siderius	Aye
Simon	Aye
Skari	Aye
Sparks	Aye
Speer	Nay
Studer	Aye
Sullivan	Aye
Swanberg	Aye
Toole	Aye
Van Buskirk	Aye
Vermillion	Nay
Wagner	Aye
Ward	Aye
Warden	Aye
Wilson	Aye
Woodmansey	Aye

CLERK HANSON: Mr. Chairman. 62 delegates voting Aye, 30 voting No.

CHAIRMAN GRAYBILL: 62 having voted Aye and 30 voting No, Mr. Etchart's motion prevails. And the minimum in Mr. Aasheim's amendment is 40 on the Senate and 80 on the House. Is there further discussion on Mr. Etchart's—or Mr. Aasheim's motion?

Mr. Schiltz.

DELEGATE SCHILTZ: I would point out that somewhere in this Legislative Article it provides that a senatorial district be made up of two representative districts. And I don't know if you can make that work out if you have anything but two to one provided for.

CHAIRMAN GRAYBILL: The Chair would observe that the minimums, at least, would allow two to one. Very well, the issue is on Mr. Aasheim's motion. His motion is to change, in Section 2 of the bicameral—if you're on page 7, and the bicameral section—the maximum in the Senate is to be 50 and, as amended, the minimum is to be 40; the maximum in the House is to be 100 and the minimum in the House is to be 80. Do you want a roll call? Very well. You want a roll call. So many as shall be in favor of Mr. Aasheim's amendment, vote Aye; and so many as shall be opposed, vote No. Have all the delegates voted?

Mrs. Pemberton.

DELEGATE PEMBERTON: Mr. President [Chairman]. There's some question in this area of the hall—the exact way we're supposed to be looking at this.

CHAIRMAN GRAYBILL: Well, I'm sorry. The vote is on—and you can explain your vote. I've explained that you're voting on Mr. Aasheim's amendment, which is to change the bicameral size of the Legislature so that the Senate is 40 and 50 and the House is 80 and a hundred. That's his amendment. It changes it from the 53 and 50 and from the 106 and a hundred. The vote is still open. Does any delegate wish to change his vote?

Mr. Romney, for what purpose—

DELEGATE ROMNEY: Would you please state that again, the numbers?

CHAIRMAN GRAYBILL: Mr. Aasheim's amendment now reads that the maximum in the Senate would be 50 and the minimum would be 40; and in the House, the maximum would be a hundred and the minimum would be 80. You're aware that Mr. Etchart amended the bottom limits of Mr. Aasheim's motion. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Anyone doesn't understand yet? Very well. We'll close the vote.

Aasheim	Aye
Anderson, J.	Nay
Anderson, O.	Aye
Arbanas	Absent
Arness	Nay
Aronow	Nay
Artz	Aye
Ask	Nay
Babcock	Aye
Barnard	Nay
Bates	Aye
Belcher	Absent
Berg	Aye
Berthelson	Aye
Blaylock	Aye
Blend	Aye
Bowman	Aye
Brazier	Aye
Brown	Aye
Bugbee	Aye
Burkhardt	Aye
Cain	Aye
Campbell	Aye
Cate	Aye
Champoux	Absent
Choate	Aye
Conover	Aye
Cross	Aye
Dahood	Aye
Davis	Nay
Delaney	Nay
Driscoll	Nay
Drum	Aye
Eck	Aye
Erdmann	Aye
Eskildsen	Absent
Etchart	Aye
Felt	Aye
Foster	Nay
Furlong	Aye
Garlington	Aye
Graybill	Aye
Gysler	Aye
Habedank	Aye
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Aye
Harlow	Aye
Harper	Aye
Harrington	Aye
Heliker	Aye
Holland	Absent
Jacobsen	Aye
James	Aye
Johnson	Aye
Joyce	Nay
Kamhoot	Aye
Kelleher	Absent
Leuthold	Aye
Loendorf	Aye
Lorello	Aye
Mahoney	Aye
Mansfield	Aye
Martin	Nay
McCarvel	Aye
McDonough	Nay
McKeon	Aye
McNeil	Aye
Melvin	Aye
Monroe	Nay
Murray	Aye
Noble	Aye
Nutting	Absent
Payne	Aye
Pemberton	Aye
Rebal	Aye
Reichert	Aye
Robinson	Nay

Roeder	Aye
Rollins	Aye
Romney	Aye
Rygg	Aye
Scanlin	Aye
Schiltz	Aye
Siderius	Aye
Simon	Aye
Skari	Aye
Sparks	Aye
Speer	Aye
Studer	Aye
Sullivan	Aye
Swanberg	Aye
Toole	Aye
Van Buskirk	Aye
Vermillion	Nay
Wagner	Aye
Ward	Aye
Warden	Aye
Wilson	Aye
Woodmansey	Aye

CLERK HANSON: Mr. Chairman, 77 delegates voting Aye, 16 voting No.

CHAIRMAN GRAYBILL: 77 voting Aye, 16 voting No, Mr. Aasheim's amendment prevails. Are there other—is there anything else about the numbers? If not—

Mr. Martin.

DELEGATE MARTIN: Mr. Chairman, I'd like to explain my vote. Not only my vote but—

CHAIRMAN GRAYBILL: Now, wait a minute. I'm sorry; you have to explain your vote before the vote is taken—while the vote is being taken. And there was lots of time. If you voted wrong and would like the journal to show so, you may certainly do so.

DELEGATE MARTIN: I don't want to do that. I thought you said we could explain our vote.

CHAIRMAN GRAYBILL: You may explain your vote, under the rules, until I close the ballot. And there was lots of time; and you certainly may put on the journal something if you want to, but the vote is already cast. But if you wanted the journal to show something, go ahead and state it.

DELEGATE MARTIN: My reason for voting No is for the reason that I'm going to continue and be consistent in voting No. Once we decide something, it seems we should be able to stand up for it.

CHAIRMAN GRAYBILL: All right. Now, just a minute—Mr. Aasheim, do you want to move that Section 2 of the Legislative Bicameral Article be adopted?

DELEGATE AASHEIM: Mr. Chairman. I move to adopt—Section 2 of the bicameral article, as on page 7, be adopted as amended.

CHAIRMAN GRAYBILL: Well, I think you mean to say that when this committee does arise and report, after having had under consideration Section 2 of the—

DELEGATE AASHEIM: I just said it.

CHAIRMAN GRAYBILL: —bicameral article, that this committee report to the Convention that it be adopted. Is that what you say?

DELEGATE AASHEIM: That's what I said, yes.

CHAIRMAN GRAYBILL: All right. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted as amended. Now, the Chair sees that it's—the hour is late and rather than go on with yours, Mr. Harper, I'm going to recess. But before we recess, Mr. Murray, the Chair would like—unless someone objects, the Chair would like to make two announcements, or three announcements. First of all, some of you might want to arrange during the lunch hour or call your wives—the wives are having a luncheon tomorrow and reservations are necessary. And Mrs. Garlington has arranged to have a speaker discussing interesting and old houses in Helena. And it looks like a good program, so if your wife is not attending yet, and you want to check on it, will you please check and make these arrangements by this afternoon with the office out there. Secondly, the Chair wishes to advise you that we're having a delegates' dinner tomorrow at the Colonial Club, and you're allowed to bring guests. And we do not yet have enough reservations, so please make your reservations. This is another $5, including two drinks, dinner just like the other one, so please get your names in out there to the people in the glass cage.

Now, Mr. Murray, have you an announcement?

DELEGATE MURRAY: I move the committee recess until the hour of 1:50 p.m. this day.

CHAIRMAN GRAYBILL: The motion is to recess till 1:50 this day. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: So ordered.

(Convention recessed at 12:38 p.m.—reconvened at 1:57 p.m.)

CHAIRMAN GRAYBILL: The Committee will be in session.

Mr. Arbanas, for what purpose do you arise?

DELEGATE ARBANAS: Mr. President [Chairman], I'd like to be counted as present.

CHAIRMAN GRAYBILL: Very well, you're present and voting; and, let's see, Mr.—somebody else that was absent this morning wants to be present. Oh, Mr. Champoux. He isn't present, but he is. Is he here? Mr. Champoux, do you want to be counted present this afternoon?

DELEGATE CHAMPOUX: Yes, sir.

CHAIRMAN GRAYBILL: Very well. Members of the committee, before the recess we had completed Section 2 of the Legislative Bicameral Article. The rules were suspended to allow for reconsideration of Section 2 of the unicameral article, which appears on page 10 of the Style and Drafting Legislative Proposal.

The Chair will recognize Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, I move to reconsider Section 2 of the Legislative Unicameral Article for the purpose of adjusting the size.

CHAIRMAN GRAYBILL: Mrs. Reichert, did you vote on the prevailing side?

DELEGATE REICHERT: Yes, I did.

CHAIRMAN GRAYBILL: All right. Mrs. Reichert, do you want to explain? Now, this is—we're going to vote on reconsideration. Do you want to explain briefly your purpose?

DELEGATE REICHERT: Very briefly. For the same reasons that the bicameral was reconsidered, I think we need some flexibility. I think that the figures 100 to 105 as they now exist, do not lend the kind of flexibility we would like in this article. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there discussion of the motion to reconsider?
(No response)

CHAIRMAN GRAYBILL: If not, all in favor of the motion to reconsider, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and so ordered.

Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, I move to amend Section 2, page 10, line 14, of the Legislative Unicameral Article by striking the following figure: "100", and inserting in lieu thereof the following: "90".

Mr. Chairman.

CHAIRMAN GRAYBILL: Is that the only one?

DELEGATE REICHERT: Yes, sir.

CHAIRMAN GRAYBILL: Very well, Mrs. Reichert.

DELEGATE REICHERT: We feel that by substituting the figure 90 for a hundred and retaining the maximum figure of one hundred—and five, we will have attained the type of flexibility we would like in our Legislative Article.

CHAIRMAN GRAYBILL: Very well, the sense of Mrs. Reichert's amendment is to change, on line 14 in Section 2 of the Legislative Unicameral Article, on page 10 of your booklets, the number "100" to "90", so that the spread on the unicameral body would be 90 to a hundred and five instead of a hundred to a hundred and five. Is there discussion?

Mr. Hanson.

DELEGATE ROD HANSON: Mr. President [Chairman], I move to amend Mrs. Reichert's motion to change the number "105" on line 14, page 10, to "100".

CHAIRMAN GRAYBILL: Mr. Hanson has moved to change the number "105", on line 14, to "100" so that the spread, if both of these amendments was adopted, would be from 90 to a hundred instead of from a hundred to a hundred and five. Mrs. Reichert.

DELEGATE REICHERT: Mr. Chairman, I resist the amendment by Mr. Hanson. I've spoken to several of my fellow delegates, particularly Mr. Foster, and 105 seems a more realistic figure for the maximum limit on a unicameral body.

CHAIRMAN GRAYBILL: Is there other discussion? I want to let them discuss it, Mr. Hanson, before you close. Mr. Romney.

DELEGATE ROMNEY: I concur with the lady from Cascade. Hundred and five is a magic number that we should have had in the other one; and so I think that we should retain the 105 so that all the bicameralists that wanted to have a large and adequate number of representatives can swing over to the unicameralists' position in the way in which it was divined they would. May I ask the lady from Cascade a question?

CHAIRMAN GRAYBILL: Mrs. Reichert, will you yield?

DELEGATE REICHERT: Yes, Mr. Chairman.

DELEGATE ROMNEY: Mrs. Reichert, would you advise me who is going to make the decision as to how many it will be?

DELEGATE REICHERT: Well, I think when districting is taken care of, I think, realistically, that we're going to look towards maximum limits in both the unicameral and bicameral for the next few years. I think that, realistically, we're going to have a bicameral of a hundred and fifty for the next few years or a unicameral of a hundred and five. I think that for the future, we need the lower limit of the bicameral, which is a hundred and twenty, if we ever do need it, and then the lower limit of the unicameral as 90.

CHAIRMAN GRAYBILL: Mr. Romney, I don't know that that's responsive to your question, but the section says "the number of senators shall be prescribed by law"; so the Legislature is going to set it. Is there other discussion? Mr. Skari.

DELEGATE SKARI: Mr. President [Chairman], would Mr. Hanson yield to a question?

CHAIRMAN GRAYBILL: Mr. Hanson, will you yield?

DELEGATE ROD HANSON: I yield.

DELEGATE SKARI: Rod, I notice that on the bicameral we have the range set from 80 to 100. Is there any special reason why you tighten up this range of flexibility on the unicameral from 90 to 100? It does seem to compress it here.

DELEGATE ROD HANSON: Carman, I merely did it to conform to the same size as the House would be in a unicameral body. However, if—I see the consensus, and I would withdraw my motion to amend.

CHAIRMAN GRAYBILL: Mr. Hanson, do you want to withdraw yours?

DELEGATE ROD HANSON: Yes, I withdraw it.

CHAIRMAN GRAYBILL: Mr. Hanson has withdrawn his motion. Is there any further discussion on Mrs. Reichert's motion to lower the number "100" to "90" so that the range is 90 to a hundred and five?

DELEGATE AASHEIM: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Are we on Mr. Hanson's amendment now?

CHAIRMAN GRAYBILL: He just withdrew his.

DELEGATE AASHEIM: Oh, I'm sorry.

CHAIRMAN GRAYBILL: So we're on Mrs. Reichert's which is moving the number "100" down to "90", the bottom.

DELEGATE AASHEIM: But I think there's some clarification that's necessary here. There's a feeling by some people that the commission sets the size of the Legislature. This is not true. The Legislature still determines the size. I'm sorry Mr. Hanson withdrew his because I—no, that's fine, because I'm sure that the unicameral people (Laughter)—the unicameral people need 5 more to correct the errors the hundred make. (Laughter).

CHAIRMAN GRAYBILL: Mr. Aasheim, maybe I should recap this for you, but Mrs. Reichert has made an amendment to change the minimum from a hundred to 90. Mr. Hanson made a motion, but it has been withdrawn; and Mr. Romney asked who would set it, and we agreed the Legislature would. Is there further discussion?

DELEGATE ROMNEY: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: I didn't agree the Legislature would. I think the commission will.

CHAIRMAN GRAYBILL: I see, under this section you think the commission will.

DELEGATE ROMNEY: Yes.

CHAIRMAN GRAYBILL: Well, it looks—the Chair would observe that the commission's got to have the power to legislate, then, because it says "as provided by law". Very well, do you want a roll call vote?

DELEGATES: No.

CHAIRMAN GRAYBILL: Mrs. Reichert says yes. All those in favor of Mrs. Reichert's motion to lower the number "100" to "90" on line 14 of Section 2 of the unicameral article, please indicate so by voting Aye; and those that want to leave it—those that do not want to, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please cast the ballot.

Aasheim	Aye
Anderson, J.	Aye
Anderson, O.	Aye
Arbanas	Aye
Arness	Absent
Aronow	Nay
Artz	Aye
Ask	Nay
Babcock	Absent
Barnard	Nay
Bates	Absent
Belcher	Absent
Berg	Aye
Berthelson	Aye
Blaylock	Aye
Blend	Aye
Bowman	Aye
Brazier	Aye
Brown	Aye
Bugbee	Aye
Burkhardt	Absent
Cain	Aye
Campbell	Aye
Cate	Aye
Champoux	Aye
Choate	Absent
Conover	Aye
Cross	Aye
Dahood	Aye
Davis	Absent
Delaney	Absent
Driscoll	Nay
Drum	Absent
Eck	Aye
Erdmann	Aye
Eskildsen	Excused
Etchart	Aye
Felt	Absent
Foster	Aye
Furlong	Aye
Garlington	Aye
Gysler	Aye
Habedank	Aye
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Aye
Harlow	Aye
Harper	Aye
Harrington	Aye
Heliker	Aye
Holland	Aye
Jacobsen	Aye
James	Aye
Johnson	Aye
Joyce	Nay
Kamhoot	Nay
Kelleher	Aye
Leuthold	Aye
Loendorf	Absent
Lorello	Aye
Mahoney	Aye
Mansfield	Aye

Martin	Nay
McCarvel	Aye
McDonough	Aye
McKeon	Aye
McNeil	Aye
Melvin	Aye
Monroe	Aye
Murray	Aye
Noble	Aye
Nutting	Excused
Payne	Aye
Pemberton	Aye
Rebal	Aye
Reichert	Aye
Robinson	Aye
Roeder	Absent
Rollins	Aye
Romney	Nay
Rygg	Aye
Scanlin	Aye
Schiltz	Aye
Siderius	Aye
Simon	Aye
Skari	Aye
Sparks	Aye
Speer	Aye
Studer	Aye
Sullivan	Aye
Swanberg	Aye
Toole	Aye
Van Buskirk	Aye
Vermillion	Aye
Wagner	Aye
Ward	Absent
Warden	Aye
Wilson	Nay
Woodmansey	Aye
Mr. Chairman	Aye

CLERK SMITH: Mr. Chairman, 76 voting Aye, 9 voting No.

CHAIRMAN GRAYBILL: 76 having voted Aye and 9 No, Mrs. Reichert's motion carries and the number in the unicameral article is now reduced to 90—90 to a hundred and five.

Mr. Schiltz.

DELEGATE SCHILTZ: Having voted on the prevailing side this morning when we considered Section 14 of the unicameral article, I move to add, after the word "senators" on page 4 of page 15—

CHAIRMAN GRAYBILL: Mr. Schiltz, the Chair will let you do that next. But will you move that when this committee does arise and report, after having had under consideration Section 2 of the unicameral Article V under Legislature, that it recommend to the Convention that the same be adopted as amended.

DELEGATE SCHILTZ: In the interests of saving my voice, I so move.

CHAIRMAN GRAYBILL: All right. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: (Opposed, No. (No response)

CHAIRMAN GRAYBILL: Now, Section 2 is closed up again. All right, now you want to look at 14?

DELEGATE SCHILTZ: Fourteen on page 15, and of course it will be changed back on page 3 or wherever it is. On line 4, after the word "senators", which will, of course, be changed to "members", add the words "and each district shall elect one member". Mrs. Bates pointed this out to me; and, of course, we only worked with what we had to work with, and that's what that committee sent us. And in Section 14 in the bicameral, or at least in the corresponding section of the bicameral, that language is used—"and each district shall elect one member"—and I think it probably should be in here because it needs it and because it needs to be parallel.

CHAIRMAN GRAYBILL: And it does not amount to a substantive change because we did adopt the single-member district proposal, is that the idea?

DELEGATE SCHILTZ: That's right.

CHAIRMAN GRAYBILL: All right, now, the Chair understands that Mr. Schiltz is moving to reconsider Section 14 in the unicameral, and he has stated his reason. Is there discussion? All in favor of reconsidering Section 14, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. Now, Mr. Schiltz, before you make your amendment, this morning you, I think, left out Section 14. Does it have to be changed to "members" from "senators"? I don't care. Make your motion.

DELEGATE SCHILTZ: Well, I'll make a motion before we finish with this report that will take care of that, too.

CHAIRMAN GRAYBILL: All right.

DELEGATE SCHILTZ: Mr. Chairman. I move to amend Section 14 of the unicameral section, as it appears on page 15, line 4, by adding, after the word "senators", "and each district shall elect one member".

CHAIRMAN GRAYBILL: Very well, Mr. Schiltz wishes to amend, on page 15 at line 4, after the word "senators", by adding: "and each district shall elect one member", so that the single-member district principle is involved in this section; and he tells us that it is also presently involved in the bicameral section. Is there any discussion? (No response) All in favor of the motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section 14 of the unicameral Judicial—or Legislative Article as reported in Report Number 3 of Style and Drafting Committee, that it recommend the same do be adopted as amended.

CHAIRMAN GRAYBILL: You've all heard the motion that Section 14, which we've just reconsidered and amended, be adopted as amended. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted as amended.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Have we moved Section 2 in the bicameral?

CHAIRMAN GRAYBILL: We have.

DELEGATE SCHILTZ: Since it's been changed?

CHAIRMAN GRAYBILL: As amended, we moved it, yes.

DELEGATE SCHILTZ: All right, we're ready to go to Section 3 then.

CHAIRMAN GRAYBILL: All right, if you'll all turn to page 7 after the sheet in the back of the book, on the bicameral proposal, we're now ready to proceed with Section 3.
Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 3 of the bicameral section of Style and Drafting Report Number 3, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: These are style changes only, and they pertain only to the unicameral—or the bicameral section.

CHAIRMAN GRAYBILL: Is there any discussion or debate of Section 3? (No response) So many as shall be in favor of adopting Section 3, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 4.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 4 of the bicameral portion of Style and Drafting Report Number 3, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: This was approved in the same form this morning in the unicameral section, so all the style changes that were noted then are in here now.

CHAIRMAN GRAYBILL: Is there any discussion? (No response) All in favor of Section 4, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: It's adopted. Mr. Schiltz. Section 5.

DELEGATE SCHILTZ: Before I get into that, I want to ask Mr. Harlow if he's working on Section 13. Are you? (No response) Okay. I move that when this committee does arise and report, after having had under consideration Section 5, sub. 1, of the Style and Drafting Report Number 3, bicameral section, it recommended the same do pass.

Mr. Chairman, again, this was approved in the unicameral portion this morning and it's the same.

CHAIRMAN GRAYBILL: Is there any discussion of Section 5, sub. 1? (No response) All in favor of Section 5, sub. 1, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 2.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section 5, sub. 2, bicameral portion of Style and Drafting Report Number 3, that it recommend the same be adopted.

Mr. Chairman, again, this was adopted this morning in the same form.

CHAIRMAN GRAYBILL: Any discussion? (No response) All in favor of 5, sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 6.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 6 of the bicameral portion of Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Once again, this was okayed this morning in the same form in the unicameral section.

CHAIRMAN GRAYBILL: Any discussion? (No response) So many as shall be in favor of Section 6, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response) It's adopted. Section 7.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 7 of the bicameral portion of Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: There were no changes in this this morning, and it's the same as the one we adopted for the unicameral section.

CHAIRMAN GRAYBILL: All those in favor of Section 7, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 8.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 8 of the bicameral section of the Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman, this is, again, the same as the one we adopted this morning for the unicameral section.

CHAIRMAN GRAYBILL: Is there discussion? (No response) All in favor of Section 8, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: Section 8 is adopted. Section 9.

DELEGATE SCHILTZ: Mr. Chairman. I move that the language in Section 9 be deleted, and in lieu thereof the struck-out language be reinstated.

CHAIRMAN GRAYBILL: And in this case we can leave in the word "senator" or "representative", can we?

DELEGATE SCHILTZ: Yes.

CHAIRMAN GRAYBILL: "—and a member of either house", we can leave that in?

DELEGATE SCHILTZ: That's right.

CHAIRMAN GRAYBILL: The body will recognize that this is the one this morning where we agreed to put the stricken language back in because it was out of the old—the present Constitution. Is there further discussion?
Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, is a substitute motion in order?

CHAIRMAN GRAYBILL: You certainly can move anything you want on Section 9.

DELEGATE FURLONG: I move as a substitute motion in Section 9, in both the bicameral and unicameral, actually, the—

CHAIRMAN GRAYBILL: Well, you can only do it at this time in Section 9, bicameral.

DELEGATE FURLONG: All right. Thank you. The substitute would read: "Section 9. Disqualification. No legislator shall, during the time for which he is elected, be appointed to any civil office under the authority of the State of Montana created during such time."
Mr. Chairman.

CHAIRMAN GRAYBILL: Well, let me get the sense of your amendment. You're going to use the first four stricken lines down through—is that right?

DELEGATE FURLONG: Well, actually, it's the majority report as it was originally reported to the Convention.

CHAIRMAN GRAYBILL: Read it again slowly, what you want to—your amendment to say.

DELEGATE FURLONG: It would read: "Section 9. Disqualification. No legislator shall, during the time for which he is elected, be appointed to any civil office under the authority of the State of Montana created during such time.

CHAIRMAN GRAYBILL: "No legislator shall"—so we put "legislator" up there in place of "senator or representative"—"during the term for which he shall have been elected, be appointed to any civil office under the State of Montana"—is that what you said?

DELEGATE FURLONG: Yes.

CHAIRMAN GRAYBILL: And then, what's the rest of it?

DELEGATE FURLONG: "—created during such time."

CHAIRMAN GRAYBILL: All right, this—Mr. Furlong has proposed an amendment which limits the disqualification to offices created during the time that the senator or representative—or the legislator serves in his term. I take it that's the sense of your amendment. Isn't that right? In other words, the only disqualification it would have would be a senator or a legislator would be disqualified from serving on any—in any civil office which was created during the time—during the term for which he was elected.

DELEGATE FURLONG: Yes.

CHAIRMAN GRAYBILL: But he could serve on other—he could be appointed to other offices, because he is eliminating the rest of the disqualifications.
Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman, fellow delegates. I actually rise with hesitation to do this, but I realize the dangers inherent that you may have power play and fraud and you may sell votes to get appointed, and that does concern me. But I think the few times that that would conceivably happen under the normal course of circumstances is outweighed by the fact that we are in—we are essentially denying a person the right to improve his position. I can envision where a person elected for 4 years may, for healthful reasons, decide that he best not serve in the Legislature and could still be barred during that period of time from any appointment. It just seems to me that a man or woman inherently has the right to improve their position, and I just think that the number of times that fraud might be involved would be far outweighed by the number of times that we would, under the present situation, actually disbar or disqualify an otherwise qualified person who may very well be the person for the job or the position to which he would be appointed. I would certainly like to hear some discussion. I would appreciate your support. Thank you.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman, I rise to a point of order. There's nothing particularly about Mr. Furlong's motion that I disagree with. I don't have any strong feelings one way or another; but this is a Style and Drafting report and it appears to me that that proposed motion goes to substance. And, as such, I ask for a ruling of the Chair as to whether or not Mr. Furlong's motion is in order.

CHAIRMAN GRAYBILL: You're quite correct. I think it does go to substance and I think, Mr. Furlong, I have to move you—rule you out of order now that I understand it, unless you want to make a motion to suspend the rules.

DELEGATE FURLONG: Mr. Chairman and Mr. Holland, thank you for pointing out the error. I just thought I could slip something in. (Laughter) No, actually, I would move to suspend the rules so we could consider the proposition that I've just put before the body.

CHAIRMAN GRAYBILL: All right, you've got to write that down so I've got it up here. Just make a motion to suspend the rules for the purpose of amending Section 9 on disqualification; and I guess we'll vote on that in a minute, soon as you get it written up. Is there discussion or debate of the motion to suspend the rules only? Not the issue, just the motion to suspend the rules.

Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman, I rise to resist the motion to suspend the rules for this proposed amendment to our article.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, I likewise resist the motion to suspend the rules. The motion is made to consider precisely what we have already considered in the Committee of the Whole. The majority of this Convention voted to reject the majority committee's report and to adopt the present Article V, Section 7, of our Constitution, which appears in this Style and Drafting, so for that reason I would oppose the motion to suspend the rules.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: I move that we have a roll call vote on this. Every time we turn around we're going to suspend the rules. I think we ought to roll call them each time.

CHAIRMAN GRAYBILL: Very well, we'll have a roll call. Very well, Mr. Furlong's motion is to suspend the rules for the purpose of voting on the substantive issue of what disqualifications should be allowed under Section 9 in the bicameral article. Is there further discussion?

Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman, I rise for a point of information. Would you refresh my recollection as to what we did with Section 9 in the unicameral alternative this morning?

CHAIRMAN GRAYBILL: Yes. On Section 9 this morning we struck out the Style and Drafting Committee's language, and we reinserted the stricken out language, which is, in effect, the present Constitution. We also changed, in the other article, "senator or representative" to "legislator"; but that's a minor matter.

DELEGATE HELIKER: We did that on the basis that the Style and Drafting's report was a substantive change?

CHAIRMAN GRAYBILL: No, we did it on the basis that—well, yes, there was some argument that it was a substantive change, but in other words we did not adopt their style change. We went back to the original adopted language of the Convention.

DELEGATE HELIKER: It didn't require a suspension of the rules in any case, did it?

CHAIRMAN GRAYBILL: No, it was not a substantive change from our original language. The argument was made that the language of the committee was a substantive change, but it was not a substantive change from our original action in the Convention.

Mrs. Erdmann.

DELEGATE ERDMANN: On the same argument that we used this morning, I certainly believe we should go back to the original form that we did for the other section, because it seems to me that—

CHAIRMAN GRAYBILL: Well, all right, but that isn't the issue.

DELEGATE ERDMANN: Right now it's for reconsideration.

CHAIRMAN GRAYBILL: That's right.

DELEGATE ERDMANN: Excuse me.

CHAIRMAN GRAYBILL: In other words, if we reconsider it, then he's going to change it—going to move to change the nature of it. All right, a roll call vote has been called for. So many as are in favor of reconsidering Section 9 of the bicameral article, on page 9 of Style and Drafting's bicameral report, vote Aye; so many as are opposed, vote No. Well, Mr. Clerk, cancel the ballot, and we'll start over. I pushed the wrong button. All right, now, I'll open the vote again. So many as are in favor, vote Aye; and so many as are opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the vote.

Aasheim	Nay
Anderson, J.	Nay
Anderson, O.	Nay
Arbanas	Aye
Arness	Nay
Aronow	Nay
Artz	Nay
Ask	Nay
Babcock	Aye
Barnard	Nay
Bates	Aye
Belcher	Excused
Berg	Nay
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Nay
Brazier	Absent
Brown	Nay
Bugbee	Nay
Burkhardt	Absent
Cain	Absent
Campbell	Absent
Cate	Nay
Champoux	Aye
Choate	Aye
Conover	Nay
Cross	Aye
Dahood	Aye
Davis	Absent
Delaney	Nay
Driscoll	Aye
Drum	Aye
Eck	Nay
Erdmann	Nay
Eskildsen	Excused
Etchart	Nay
Felt	Nay
Foster	Aye
Furlong	Aye
Garlington	Aye
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Nay
Harlow	Nay
Harper	Absent
Harrington	Nay
Heliker	Nay
Holland	Nay
Jacobsen	Aye
James	Nay
Johnson	Nay
Joyce	Aye
Kamhoot	Nay
Kelleher	Nay
Leuthold	Nay
Loendorf	Absent
Lorello	Nay
Mahoney	Nay
Mansfield	Nay
Martin	Nay
McCarvel	Nay
McDonough	Nay
McKeon	Nay
McNeil	Nay
Melvin	Nay
Monroe	Nay
Murray	Absent
Noble	Nay

Nutting	Excused
Payne	Nay
Pemberton	Nay
Rebal	Nay
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Nay
Romney	Nay
Rygg	Aye
Scanlin	Nay
Schiltz	Nay
Siderius	Nay
Simon	Nay
Skari	Aye
Sparks	Nay
Speer	Aye
Studer	Aye
Sullivan	Aye
Swanberg	Aye
Toole	Nay
Van Buskirk	Absent
Vermillion	Nay
Wagner	Nay
Ward	Nay
Warden	Nay
Wilson	Nay
Woodmansey	Nay
Mr. Chairman	Nay

CLERK SMITH: Mr. Chairman, 23 voting Aye, 65 voting No.

CHAIRMAN GRAYBILL: 65 having voted No, the motion fails to carry and Section 9 is not reopened for substance; and your motion is then out of order, Mr. Furlong. And Mr. Schiltz, your motion—did you make your motion to use the original language?

DELEGATE SCHILTZ: (Inaudible)

CHAIRMAN GRAYBILL: All right, Section—Mr. Schiltz's motion is to use the original language on Section 9, so that it comports with what we did this morning. Mrs. Erdmann, that's your point. Is there discussion about that? If not, all in favor of Mr. Schiltz's motion to use the original language, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it. Will you move the section again?

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 9 of the bicameral portion of the Style and Drafting Report Number 3, it recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: So many as are in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Section 9 is adopted. Section 10.

DELEGATE SCHILTZ: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 10 of the bicameral section of the—portion of the Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman, we okayed this this morning in the same form except that there is bicameral language in Section 10 in this portion.

CHAIRMAN GRAYBILL: Is there discussion of Section 10?

DELEGATE SCHILTZ: That's sub. 1, I guess.

CHAIRMAN GRAYBILL: Ten, sub. 1. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 2.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10, sub. 2, of the bicameral portion of the Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman, this is identical with the material we adopted this morning for unicameral.

CHAIRMAN GRAYBILL: Any discussion? (No response) All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Sub. 2 is adopted. Sub. 3.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10, sub. 3, bicameral portion of Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman, this is the same as we adopted this morning for the unicameral.

CHAIRMAN GRAYBILL: Any discussion of sub. 3? (No response) All in favor of sub. 3, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 4.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10, sub. 4, the bicameral portion of Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman, this again is identical with the material we adopted for unicameral this morning.

CHAIRMAN GRAYBILL: All in favor of sub. 4, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 5.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10, sub. 5, bicameral portion of Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman, we did not have this this morning. It's a special provision for bicameral Legislature, but there are no changes other than style changes, and they're very minor.

CHAIRMAN GRAYBILL: Is there any discussion of sub. 5? (No response) All in favor of sub. 5, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 11.

DELEGATE SCHILTZ: Mr. Chairman, I move when this committee does arise and report, after having had under consideration Section 11, sub. 1, bicameral portion, Style and Drafting Report Number 3, it recommend the same be adopted. Mr. Chairman, these are style changes—No, these are the same provisions that were okayed this morning in the unicameral section.

CHAIRMAN GRAYBILL: Any discussion of Section 11, sub. 1? (No response) All in favor of Section 11, sub. 1, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it; it's adopted. Sub. 2.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 11, sub. 2, bicameral portion, Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman, this is identical to the material adopted this morning in the unicameral.

CHAIRMAN GRAYBILL: Any discussion of 11, sub. 2? (No response) All in favor of 11, sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. Eleven—now, let's make—let's be careful—oh, I see, you did strike the 3 there.

DELEGATE SCHILTZ: Yes.

CHAIRMAN GRAYBILL: All right, now, 11, sub. 3, on line 23, page 10.

DELEGATE SCHILTZ: Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 11, sub. 3, bicameral portion, Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman, this is the same material as we adopted in the unicameral.

CHAIRMAN GRAYBILL: Is there any discussion of 11, sub. 3?

Mrs. Erdmann.

DELEGATE ERDMANN: Mr. President [Chairman], by eliminating the two words—"by a vote of a majority of all members present"—by eliminating "and voting", I'm wondering if we really haven't changed something, because the people present would be answering to the roll call; but you also have members who abstain from voting on a particular item; and I just wondered if that had been considered by the committee.

CHAIRMAN GRAYBILL: What line are you on, Mrs. Erdmann?

DELEGATE SCHILTZ: What line are you on?

DELEGATE ERDMANN: Section 1 of "Bills"—Section 11, end of line 12.

DELEGATE SCHILTZ: Well, I'll have to look at my comments.

CHAIRMAN GRAYBILL: On Section 11, sub. 1, are you talking about? I don't see the words "and voting".

DELEGATE ERDMANN: My point is that we have referred before to a majority of the members present "and voting", and this is my point. We have deleted the two words "and voting", and I do believe this makes some difference in the actual count.

CHAIRMAN GRAYBILL: Mrs. Erdmann's point is to line 12, which we've gone over but we can open up. She thinks the words "and voting" should be put after the word "present", on line 12, sub. 1, in 11.

Mr. Schiltz.

DELEGATE SCHILTZ: Well, we didn't have that material to work with and we supplied what did get supplied there, I think. I don't care whether you want to put it in or not. It would be substantive, I think.

CHAIRMAN GRAYBILL: Well, I think Mrs. Erdmann's point is it isn't any more substantive than saying "present". I mean, either one of them is substantive in the sense that we—or either one of them aren't, in the sense that we didn't say specifically.

DELEGATE SCHILTZ: Well, yes; it's whatever anybody wants to do. I don't really care. Well, you see down on page—on lines 19 and 20, we incorporated that material and put it up above.

CHAIRMAN GRAYBILL: I see.

DELEGATE SCHILTZ: And there all it says is "members present", and that's what we used in order that we wouldn't change anything substantive.

CHAIRMAN GRAYBILL: It's—Mrs. Erdmann, they've picked up lines 19 and 20, which they struck out. Do you care to make an amendment, or do you—willing to let it go, Mrs. Erdmann?

DELEGATE ERDMANN: No, I'm willing to let it go.

CHAIRMAN GRAYBILL: All right, you're willing to let it go. Is there other discussion of sub. 3?

DELEGATE AASHEIM: Are we on sub.—Mr. Chairman?

CHAIRMAN GRAYBILL: We're on sub. 3, but if you want to go back to sub. 1 or 2—

DELEGATE AASHEIM: In our original presentation from the committee, our wording went something like this—"on any vote which changes the status or substance of the bill, resolution or rule, a vote of each member must be recorded." I believe it's going to be confusing if we don't say "the people voting", because if you don't say that, you have a head count every time you vote. And I think that was the intent of the committee to have the—because you're going to have times when people won't vote, and if you have the members present, you're going to have to make a head count. Now, Mr. Chairman, may we reconsider subsection 1 on Section 11?

CHAIRMAN GRAYBILL: The motion by Mr. Aasheim is to reconsider subsection 1 of Section 11 to take care of this word "and voting". All those in favor of his motion to reconsider, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: All right, the Chair is in doubt. All those in favor of reconsidering, say Aye—vote Aye on the machine; and those opposed, vote No. Have all the delegates voted?
(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?
(No response)

CHAIRMAN GRAYBILL: 45 having voted Aye, 25 No, we will reconsider subsection 1 of Section 11.

Now, Mr. Aasheim, do you want to make a motion?

DELEGATE AASHEIM: Mr. Chairman. I move to amend Section 11, subsection 1, being line 12, by adding, after the word "present", striking the period and adding "and voting period".

CHAIRMAN GRAYBILL: Mr. Aasheim has proposed to add the word "and voting", so that the line says: "members present and voting." The Chair is going to rule that that is still a Style and Drafting change. Now if anybody cares to challenge the Chair, fine; but it seems to me that it's not clear what members present—and it certainly doesn't seem that we intended that they have to recount the House every time and determine a majority, so I'm going to rule that's a style change. If anyone wants to challenge the Chair, they may. Otherwise, debate is now open on Mr. Aasheim's amendment to add the words "and voting", at the end of line 12, to that sentence. Is there any discussion? (No response) All in favor of Mr. Aasheim's motion to add the words "and voting" to the—so it says "a majority of all members present and voting", please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: So ordered.
Mr. Schiltz, will you remove Section 1, sub. 1.

DELEGATE SCHILTZ: Will I—well, I was going to—well, all right.

CHAIRMAN GRAYBILL: Unless you're not through with it.

DELEGATE SCHILTZ: Well, I'm through with that. I wanted somebody to change the unicameral, too. I move that when this committee does arise and report, after having had under consideration Section 11, sub. 1, bicameral portion of the Style and Drafting Report Number 3, that it recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: Very well. Mr. Schiltz, the—all in favor of Mr. Schiltz's motion say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: Sub. 1 is adopted as amended.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I move—

CHAIRMAN GRAYBILL: Just a moment. Make a note; and we have passed Section 11, sub. 1, in the unicameral, but we have not adopted the article and moved it out of Committee of the Whole, so we can move to reconsider that at the end.

DELEGATE SCHILTZ: Well, I can make a note, but it would be just as easy to do it now, I think.

CHAIRMAN GRAYBILL: Very well, while everyone is on it, let's turn to page—

DELEGATE SCHILTZ: Thirteen.

CHAIRMAN GRAYBILL: —page 13, line 6. Do you want to make a motion that we reconsider Section 11, sub. 1, of the unicameral article, Mr. Schiltz?

DELEGATE SCHILTZ: I make that motion for the apparent reasons.

CHAIRMAN GRAYBILL: All in favor of Mr. Schiltz's motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: Very well, it's open. Now, do you want to make your motion to—

DELEGATE SCHILTZ: Yes. I move that Section 11 of the unicameral portion of Style and Drafting Report Number 3 be amended, on line 6 on page 13, by adding, after the word "present", the words "and voting".

CHAIRMAN GRAYBILL: Is there discussion? (No response) All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: Now, do you want to move Section 11-1 of the unicameral?

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having under consideration Section 11, sub. 1, the unicameral portion, Style and Drafting Report Number 3, that it recommend the same do pass—be adopted as amended.

CHAIRMAN GRAYBILL: All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Section 11, sub. 1 of the unicameral is adopted, and we're back on Section 11, sub. 3 of the bicameral, on page 10—second page 10.

DELEGATE SCHILTZ: Were we sub. 3? Have I moved that?

CHAIRMAN GRAYBILL: Well, move it again.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section 11, sub. 3, bicameral portion, Style and Drafting Report Number 3, that it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: This only has—well, it doesn't even have any changes. It's just identical to the report we adopted this morning in the bicameral—or the section—subsection.

CHAIRMAN GRAYBILL: Any discussion of sub. 3? (No response) All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 4.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section 11, sub. 4, bicameral portion, Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman, this is the same, again, as the one we adopted this morning for the unicameral.

CHAIRMAN GRAYBILL: Is there any discussion of sub. 4—11, sub. 4? (No response) All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 5.

DELEGATE SCHILTZ: Sub. 4, wasn't it?

CHAIRMAN GRAYBILL: Now we go to sub. 5.

DELEGATE SCHILTZ: Yes. Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 11, sub. 5, bicameral portion, Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman, there are no changes of any significance. It's identical with the provision we adopted this morning for unicameral.

CHAIRMAN GRAYBILL: Any discussion? (No response) All in favor of sub. 5, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered. Sub. 6.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 11, sub. 6, bicameral portion, Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman, there is no change.

CHAIRMAN GRAYBILL: No change from the unicameral.

DELEGATE SCHILTZ: From the unicameral.

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 12.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 12, bicameral portion, Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman, this is identical, again, with the unicameral section that compares with it.

CHAIRMAN GRAYBILL: Any discussion? (No response) All in favor of Section 12, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: It's adopted. Now, Section 13.

DELEGATE SCHILTZ: We should have an amendment by Mr. Harlow, I think.

CHAIRMAN GRAYBILL: Mr. Harlow, is there any reason it can't be identical to the one this morning?

DELEGATE HARLOW: Section 1—or Section 13, sub. 1, will be identical. Section 2 will be a little—Section 2 and 3 will be just a little bit different because the wording in these two sections are a little different than what the wording was in the section this morning.

CHAIRMAN GRAYBILL: Have you got them written out there?

DELEGATE HARLOW: I have them. There's only just two little cross-outs.

CHAIRMAN GRAYBILL: All right, do you want to show us in Section 13 what you want to change?

DELEGATE HARLOW: Yes. Section 13, subsection 1, will read identical to the amendment we put in this morning. "The Governor, executive officers, heads of state departments, judicial officers and other such officers as may be provided by law are subject to impeachment and upon conviction shall be removed from office. Other proceedings for removal from public office for cause may be provided by law." Subsection 2 will be the same as what is in the wording here on page 11, subsection 2, except we will cross out the words, in line 24, "removable by", and the rest of that section will remain the same. And in subsection 3 the wording as is on your page 11 there will be identical, except on page 28, we will cross out the words "for impeachment". Otherwise, Section 2—subsection 2 and 3 will remain the same as there, and subsection 1 will be identical to the words that I just read of what we put in this morning.

CHAIRMAN GRAYBILL: Very well, the Chair will allow an amendment by Mr. Harlow, the sense of which is to change subsection 1 of Section 13 so that it reads identical with the one we adopted for unicameral in the morning. Then, in subsection 2, it will strike the words—I've stricken them so well I can't read them.

DELEGATE HARLOW: "Removal by".

CHAIRMAN GRAYBILL: —"removal by", from line 14. And in subsection 3, it will strike the words—

DELEGATE HARLOW: "For impeachment".

CHAIRMAN GRAYBILL: —"for impeachment", from line 28. The sense of this amendment will then make this section read identical with the one on unicameral. Is that correct, or—make it read substantially identical with the unicameral.

DELEGATE HARLOW: Except that we do not—the words "may select the Senate as tribunal" will be different than what is in the unicameral, because there the—"it shall be provided" —"and shall provide for a tribunal."

CHAIRMAN GRAYBILL: Right. So that it provides for a different method of picking the court, but it makes a parallel change in the impeachment section to that in unicameral.

DELEGATE HARLOW: That's correct.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I had understood—or I had hoped, at least, that these changes would provide that impeachment charges were brought in one body and tried in another; and I don't have his amendment before me, but I wonder if that's contemplated? You see, in unicameral we had to say that they'd provide for a tribunal, and traditionally, the—and I think the way it's always been done in the past in this impeachment article, the House heard the charges and the Senate tried them.

CHAIRMAN GRAYBILL: I think the difficulty is that when we adopted that, Mr. Schiltz, in the Convention Committee of the Whole a few days ago, we made it general. We didn't specify. Isn't that correct? Subsection 2 says now, as amended: "The Legislature shall provide for the manner, procedure, and causes for impeachment and may select the Senate as a tribunal", but it doesn't say "must". That's the way we adopted it the other day.

DELEGATE SCHILTZ: All right. Mr. Chairman—Oh, I guess you want to get that amendment.

CHAIRMAN GRAYBILL: I'm not sure that Mr. Harlow did this, but members of the committee, you have before you the amendment of Mr. Harlow that when this committee does arise and report, after having had under consideration Section 13, sub. 1, 2 and 3, that the same—that we recommend that the same be adopted as amended. Is there discussion? (No response) All in favor of that motion, then, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted as amended.

All right, Mr. Schiltz, subsection 4 of 13.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section—subsection 4 of Section 13, bicameral portion, Style and Drafting Report Number 3, that it recommend the same be adopted.

Mr. Chairman, this is the same as the unicameral section that corresponds with it, which was adopted this morning.

CHAIRMAN GRAYBILL: Any discussion of subsection 4? (No response) All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: And 4—subsection 4 is adopted. Now, Section 14, Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 14, subsection 1, bicameral portion, Style and Drafting Report Number 3, it recommend the same be adopted.

Mr. Chairman, this is a special section that pertains only to bicameral. We made one change that might be considered substantive. If you look at line 8, we inserted the word "adjoining" as a new word; however, we picked it up from below where they talked about the districts consisting of compact and contiguous territory, and we thought that was warranted.

CHAIRMAN GRAYBILL: Is there discussion of Section 14? (No response) If not, all in favor of Section 14, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: And it's adopted. Section 14, sub. 2.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 14, sub. 2, bicameral portion, Style and Drafting Report Number 3, that it recommend the same be adopted.

Mr. Chairman, this is the same as the unicameral corresponding section adopted this morning.

CHAIRMAN GRAYBILL: All those in favor of 14, sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 3.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 14, sub. 3, bicameral portion, Style and Drafting Report Number 3, that it recommend the same be adopted.

Mr. Chairman, again, this is the same as the subsection we adopted this morning for unicameral.

CHAIRMAN GRAYBILL: Is there discussion? (No response) All in favor of 14, sub. 3, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. How about Section 15, Mr. Schiltz?

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 15, bicameral section, Style and Drafting Report Number 3, it recommend the same be adopted. This is the same as 16, which we okayed this morning in the unicameral section.

CHAIRMAN GRAYBILL: So many as shall be in favor of Section 15, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. Section 16, Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move to amend Section 16 as it's written on page 13, line 19, by striking the word "senators" and inserting in lieu thereof the word "legislators".

CHAIRMAN GRAYBILL: Mr. Schiltz has moved, in line 19, to strike the word "senators" and put in the word "legislators". All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

DELEGATE SCHILTZ: That only proves we're fallible up there, Mr. Chairman. Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 16, bicameral portion, Style and Drafting Proposal Number 3, as amended, it recommend the same do pass.

CHAIRMAN GRAYBILL: Is there discussion of Section 16 of the bicameral Legislative Article? (No response) If not, all in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I move that the committee send back for—or rerefer—

CHAIRMAN GRAYBILL: Mr. Schiltz, we're not through. We've got to go to 15-3 on page 16. You will remember this morning, ladies and gentlemen, that when we got to Section 15 on—referendum on unicameral Legislature, we passed—or we adopted subsection 1 and subsection 2, and when we got to subsection 3 the difficulty became that we needed to start talking about the nature of the Legislative Article. It seems to me that we have to now pick up, Mr. Schiltz, the amendments we've just made.

DELEGATE SCHILTZ: Yes, Mr. Chairman, and I'm not sure I'm prepared to do that at this moment. But what I would say is that at the end of this consideration, I will move that the report be rereferred to Style and Drafting for incorporation of all amendments and for the additional purpose of seeing if there are any anomalies that we have created by these amendments that I haven't been able to pick up as we've gone along.

CHAIRMAN GRAYBILL: Well, the Chair—let's do this. On page 17—if you'll all turn to page 17, the first major amendment is on line 2. You have to put in the "50" and "40" in place of the "53" and "50". And on line 3, you have to put in "a hundred" and "80" in place of the "hundred and six" and "a hundred". So, in other words, we have to amend Section 2 as to size, so that it's 50-40, 100-80. That's the first amendment. Then we might just mark these up. Everything else is okay till you get to number 11, sub. 1—I don't think you ever get there, do you? Yes, you do. No, you don't. Then we have to amend the one on impeachment. The bottom of page 17, Section 13, has to be amended as per the Harlow amendment.

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Couldn't we move those as amended? Wouldn't that take care of it?

CHAIRMAN GRAYBILL: Yes, I think we can. I'm just trying to point out which ones we have amended. Then the rest of them, except for—

DELEGATE SCHILTZ: Well, Mr. Chairman, I would be inclined to say—

CHAIRMAN GRAYBILL: That's all.

DELEGATE SCHILTZ: —that we adopt Section—that I move for the adoption of Section 15, sub. 3, as amended, and that will incorporate all the amendments. Then we'll pick them up upstairs.

CHAIRMAN GRAYBILL: Very well, do you want to make that motion?

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 15, sub. 3, unicameral portion, Style and Drafting Report Number 3, that it recommend the same be adopted as amended. If I may speak to it?

CHAIRMAN GRAYBILL: You may. Let me see if I can't summarize. The changes are Section 2, that we just marked on page 17, and Section 13, at the bottom of page 17; and then, Mr. Schiltz, you have some language in Section 14 that doesn't appear anywhere else that maybe we should consider.

DELEGATE SCHILTZ: Are you talking about Section 14, which is—

CHAIRMAN GRAYBILL: Section 14, sub. 4 and 5.

DELEGATE SCHILTZ: Are you talking about the one on page 18?

CHAIRMAN GRAYBILL: Page 19, yes.

DELEGATE SCHILTZ: Well, that's subsection (f).

CHAIRMAN GRAYBILL: In other words, the two lines—if you'll look at line 11 on page 19, ladies and gentlemen, subsections 4 and 5 deal with this matter, Mr. Schiltz, of the election, and I think the only—we haven't looked at them anywhere yet.

DELEGATE SCHILTZ: Subsection 4?

CHAIRMAN GRAYBILL: Have we looked at 14-4? I don't think so. "The members of the unicameral body shall remain in effect—in office and their authority to act shall continue until the members of a bicameral body are elected and qualified." We haven't considered that yet.

DELEGATE SCHILTZ: Oh, that's right. That's new.

CHAIRMAN GRAYBILL: And the next one there, the same—"the present Senate chambers shall exist"—

DELEGATE SCHILTZ: That's right.

CHAIRMAN GRAYBILL: Why don't you—

DELEGATE SCHILTZ: I'll move the adoption of those two and 6, also.

CHAIRMAN GRAYBILL: I think that 14-1, 2 and 3 have been adopted; but 4, 5 and 6 have not been adopted.

DELEGATE SCHILTZ: Right.

CHAIRMAN GRAYBILL: So, if you would move—

DELEGATE SCHILTZ: Mr. Chairman—

CHAIRMAN GRAYBILL: —4, 5 and 6; yes.

DELEGATE SCHILTZ: —I move that when this committee does arise and report, after having had under consideration the bicameral portion, Style and Drafting Report Number 3, Section 15, subsection (f), sub-subsections 4, 5 and 6, that it recommend the same be adopted. No, I don't want to say that, I guess.

CHAIRMAN GRAYBILL: Yes, you will.

DELEGATE SCHILTZ: Well, that—all right—as amended.

CHAIRMAN GRAYBILL: Is there any discussion on 4, 5 or 6 by you or anyone else? (No response) I'm on page 19, lines 11 to 21, ladies and gentlemen. These three subsections deal only with the unicameral elections, assuming there is one. Is there any changes required there? Is everybody happy with the Style and Drafting language?

DELEGATE SCHILTZ: It's—we didn't make any significant changes. It's all transition, and I'm glad you picked it up because I forgot it. But other than what we show there, there are no changes. They're all style changes.

CHAIRMAN GRAYBILL: So many as shall be in favor of subs. 4, 5 and 6 of this Section 14, which is (f) of 15, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: They are adopted. Now, Mr. Schiltz, if you'll move that other one as amended, we're in business.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 15 of the bicameral portion, Style and Drafting Report Number 3, that it recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: Is there discussion? (No response) If not, all in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Now, Mr. Schiltz, make your motion.

DELEGATE SCHILTZ: Mr. Chairman. I ask that—or I move that Style and Drafting Report Number 3 be rereferred to the committee for incorporation of amendments and for further examination and with privilege to ask that it be referred back by the committee to Order of Business Number 5.

CHAIRMAN GRAYBILL: Very well, ladies and gentlemen, the purpose of Mr. Schiltz's amendment—or motion is to take the Legislative Article, with the changes we've made this morning, back to Style and Drafting and they'll go through them and see that they're all straight. And if we missed any, they'll come back; but if not, they will move Section—we will move their report straight on to Order of Business Number 5. Now, that's the sense of the motion.

Mr. Aasheim.

DELEGATE AASHEIM: A point of information, Mr. Chairman. I don't have my sheet here. What is Order of Business Number 5?

CHAIRMAN GRAYBILL: Well, that's Final Adoption, where it would go after this Style and Drafting. We ordinarily would move it straight to Order of Business Number 5 now, but we're proposing to send it back to the committee for them to check out all of this work we've done today and see that they haven't missed anything, and then move it to Order of Business Number 5 unless there are changes that they think we've overlooked.

DELEGATE AASHEIM: Well, Mr. Chairman, for a point of further information, I think this body wants to know how this body stands on the two propositions, and I'd like to have the information of the Chair when we may make this motion. After tomorrow, it would be too late.

CHAIRMAN GRAYBILL: I take it you're talking about testing the body on unicameral-bicameral. Is that what you're talking about?

DELEGATE AASHEIM: Yes, I want to make a motion now, and I think that will test the body; and I wonder if this is the time for the motion to determine the position of these propositions on the ballot.

CHAIRMAN GRAYBILL: Well, it—

DELEGATE AASHEIM: I'd be willing to wait till tomorrow morning, 9 o'clock, if you would want—if you would give us an opportunity at that time, before we go on Order of Business Number 5.

CHAIRMAN GRAYBILL: All right, now, the Chair will explain what the Chair feels the situation is. This body moved the first day that it discussed Legislature to send the Legislative Article to Style and Drafting as a dual article. And we did send it as a dual article, and we've treated it as a dual article all the way through, and we've now approved it again as a dual article. I realize some people want to test it. I don't know what your purpose in testing it is except just for your own curiosity. It seems to me that it really does nothing to aid us in our problem here. Therefore, the Chair is not very anxious to test it, because if it gets tested and somebody loses badly, we may be back redoing the entire Legislative Article, at which point I'm not very happy to start. Now, the Chair has explained before that there is an opportunity, when Style and Drafting brings its budget—its ballot recommendation in here, to make a substitute motion or to amend in some way its ballot proposal so that you can test it at that time. If its—if your test—if your purpose in testing this, ladies and gentlemen, is purely for curiosity, I suggest you do it on a yellow pad; but once you get this body committed more than half to one of these two things, then you have the problem of what you're doing when you go to the public after doing that. What this body has really said so far is that it's going to put this issue to the public as a dual issue. I really do not see what purpose it then does to force everybody here to take a stand and count noses, except if it's a matter of going out and campaigning on the basis of that. Now, the time to do that, it seems to the Chair, is at the time that we have the ballot; and if you really want to knock unicameral out or knock bicameral out, that's the time. If your purpose is not to knock it out but merely to get a head count, I suggest you pass a yellow pad up and down the rows and find out, but I think your—I think it's very dangerous to start fooling around and getting a vote one way or the other unless you're willing to run the risk of one of these things not going on the ballot.

DELEGATE AASHEIM: Mr. Chairman, may I state my position?

CHAIRMAN GRAYBILL: Surely.

DELEGATE AASHEIM: You know, having—my name begins with a double A, and I'm in a very favorable position usually; and right at this time, as committee Chairman, I am concerned about which of these proposals is going to be on the ballot first; and that's the reason I'm trying to find out—

CHAIRMAN GRAYBILL: Well, all right, now, if that's your purpose, then you are surely premature, because that—which goes on first or the form in which they go on is Style and Drafting's and not Legislative's or this Convention's prerogative to make the recommendation. Then this body can decide and put anything on first or last or in red or green or blue ink if they want to, but not until Style and Drafting has considered that matter and made its ballot recommendation.

DELEGATE AASHEIM: Well, at this time I shall pass further action. If somebody else wants to make a move, it's entirely up to anyone else.

CHAIRMAN GRAYBILL: Now, we have a motion before us, and the motion is whether or not to send this back to Style and Drafting for checking and then, without coming back to the body, put it to Order of Business Number 5 unless there are errors in it.

Do you want to discuss the motion, Mr. Drum?

DELEGATE DRUM: Mr. Chairman, a point of information more than—

CHAIRMAN GRAYBILL: Very well.

DELEGATE DRUM: —of discussion of a motion. The question may come up at some point in the minds of the electorate: did we ever take a vote as to whether this body favored a unicameral or a bicameral? And it seems to me that at some point we should make an indication, which has been averted to date. And I think at the early time that we made the decision that we were going to accept both on the ballot, some of us felt we would hear a little more debate pro or con on bicameral or on unicameral, and I wonder if it may strengthen the posture of the Convention in the eyes of those who we represent if they felt an opinion were coming out of this Convention. And I ask you for an opinion of this, Mr. Chairman.

CHAIRMAN GRAYBILL: Well, as I say, I'm not saying that one isn't coming out; and I can think of some ways to do it, but I think that you ought to think carefully about it before you do do it. If it's the sense of this body that it's going on the ballot, there's a good question as to whether or not it needs to come out, or whether it is helpful to have it come out. But assuming you decided it was helpful, I can think of a lot of ways to get it out. If you want one off the top of my head, why don't you make a resolution and put it in and we'll—that it be the sense of this body that they prefer the unicameral thing, and we'll take a vote some morning before we get into Committee of the Whole and we'll find out how everybody feels. But I don't see that it does a whole lot of—what I'm terribly afraid of is that about the time we find out that 65 percent of you are in favor of one or the other, we're going to redo the Legislative Article; and I'm not anxious to do that. I think we've made our position clear and I think we've made it clear with the public that this thing is going on the ballot. And I think it would be very dangerous for us to try and get if off of there now; and, quite frankly, I don't trust 65 percent of you, if you happen to be on one side. (Laughter) Mr. Drum, does that answer your question?

DELEGATE DRUM: Would you yield to a question? What if it were 89 or 99 percent, or 81 percent? Shouldn't we know as a Convention what the feeling of this Convention was? I think we've had a system of legislation here for a good many years, and we're going to look foolish if we agree to change it without knowing what the consensus of this body is.

CHAIRMAN GRAYBILL: Mr. Drum, I'm not going to stop this body from finding out if it wants to, but I may make them do it while they're in order and not while they're out of order. And we're on a different motion, and I don't think that this is the place nor the time to do that.

DELEGATE AASHEIM: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I move that when Style and Drafting has done their work, that this Legislative Article be referred back to General Orders.

CHAIRMAN GRAYBILL: Now, let's see, we have Schiltz's—I'd better catch up here—Schiltz's motion to refer to Style and Drafting with a right to go to Number 5 unless there's trouble. Is that the sense of your motion, Mr. Schiltz?

DELEGATE SCHILTZ: That's right.

CHAIRMAN GRAYBILL: Unless you find something wrong, you'd send it straight on to Number 5. Now, I have Mr.—that's your motion. Now, Mr. Aasheim has a substitute motion to refer to Style and Drafting and back to General Orders. Is that what you're saying?

DELEGATE AASHEIM: Right.

CHAIRMAN GRAYBILL: This is the Legislative Article.

Very well, Mrs. Bates, do you want to discuss Mr. Aasheim's motion?

DELEGATE BATES: Mr. Chairman, when we discussed this in committee and came out with the recommendation to discuss and to write two very good articles on the bicameral and unicameral, the committee all held to this until these articles were written. After that, we had decided we could all go our own way if it came to a vote on the unicameral or the bicameral. I wonder if it would be out of order to ask that this committee, unless they can get a two-thirds vote for one or the other, that they do refer it to the people. Would that be possible; would I be out of order? Or perhaps this could be done when it comes back on General Orders.

CHAIRMAN GRAYBILL: Well, it would seem to me that any motion as to the form of the ballot is out of order at this time since we have no recommendation from Style and Drafting. I think when Style and Drafting comes in, if you want to make a motion that unless two-thirds agree, why, it has to go to the people, why, I suppose it would be perfectly normal then. Right now we're trying to decide whether to rerefer this to Style and Drafting and if so, where it goes when it comes back. Is there more discussion on Mr. Aasheim's motion to refer it to Style and Drafting and back to General Orders?

Mr. Schiltz.

DELEGATE SCHILTZ: Style and Drafting has no problem. I think whatever we come back with will be very brief and we can dispense with it in a matter of five minutes.

CHAIRMAN GRAYBILL: Mr. Felt.

DELEGATE FELT: I'd like a little clarification, perhaps from the Chair. If we vote for the motion of Delegate Aasheim, is it—is this just setting the stage for a future debate, then, as to what the position on the ballot would be for these alternative positions?

CHAIRMAN GRAYBILL: Not in the view of the Chair, it isn't. It would seem to me we would have to—

DELEGATE FELT: Well, I would like to know just what the effect of a vote on this motion would be, then.

CHAIRMAN GRAYBILL: All right. Well, Mr. Felt, you understand that I am perfectly willing to entertain any motion anyone makes; but I don't think Mr. Aasheim's motion—if it prevails and gets this back on General Orders, then the Chair will insist that we do what we do on General Orders—namely, we consider the style changes that they've made—and we will not discuss substance at that time unless you suspend the orders—suspend the rules.

DELEGATE FELT: Is this a motion to get us back on General Orders right now?

CHAIRMAN GRAYBILL: No, it's to refer it to the committee—

DELEGATE FELT: Yes.

CHAIRMAN GRAYBILL: —and then come back on General Orders again—say, tomorrow. At that time the Chair would take the position that we have to discuss whether Style and Drafting's changes are correct, and if they are, I would think we could not discuss matters of substance tomorrow unless we suspend the rules.

DELEGATE FELT: I had thought that we would—after Style and Drafting acted, that it automatically came back here to us and we didn't need a motion just to discuss form changes again, that they—it would automatically be discussed by us.

CHAIRMAN GRAYBILL: Well, Mr. Felt, ordinarily at this point we have now adopted Style and Drafting's proposals here, and at this point we ordinarily refer it to General—to Order of Business Number 5. But since there were so many changes, Mr. Schiltz asked that it go back to his committee so he can check it out and see that it's all right; and he asked that it go back to his committee, and, if it's all right, go automatically to Order of Business Number 5. Now, Mr. Aasheim has amended that—that it go back to him and come back to this body on Order of Business Number 10.

DELEGATE FELT: I see.

CHAIRMAN GRAYBILL: And you asked whether or not that would give us an opportunity to open up the question you—that these people are talking about. And I think it would not, because that would be a substantive matter if we discussed whether to put one or the other on the ballot, and it does not seem that we are ready to discuss the form of the ballot yet. No one seems to want to wait. When we get to Style and Drafting—

DELEGATE FELT: Mr. Chairman, I don't want a misunderstanding. I think—I felt that you had ruled correctly, that this was not the proper time, and I wanted to make sure this motion wouldn't have the effect of overturning the position the Chair had taken, because it seems to me, too, that this is—neither today nor tomorrow would be the proper time to take up that question.

CHAIRMAN GRAYBILL: It's the Chair's view that if you want to take this up at the proper time, the proper time is when you debate ballot, which you're going to do before you get out of here, and the Style and Drafting Committee will draw a ballot and that ballot will be up for debate. And if you don't like it, you can move to strike what they did on Legislative and put it on the ballot one way or the other, or neither way, whatever you want. And at that time, we can debate it as much as we want. Of course, that's going to be near the end. Other than that, it seems to me the only other way I can see of getting the consensus of this body—well, there are two ways. One is to suspend the rules and go right back in and start over again on Legislature, and the second way—that is, on 1, 2 and 3 of the Legislative Article. The second way would be, if you want to send to the Rules Committee a rule and get the sense of the body, rather than affect the substance of it, I suppose that the Rules Committee would discuss with you a possibility of having a resolution which might give us the sense of the body without affecting the substance of the article. Now, there's three ways to do it—the ballot time, by resolution, by suspending the rules and starting over again on the Legislature. But I don't think you're going to do it, Mr. Aasheim, by bringing it back to General Orders tomorrow. Is there further—

Mrs. Bates.

DELEGATE BATES: Yes. I would like to ask a question here that I think might clear this up to some extent. When we vote on the ballot, to decide, then will we be deciding which will be on the top—the unicameral or the bicameral? And is it possible that maybe counties will have to stagger these and that some counties will let it take the same shape as candidates and that it may not be the top in one area and—

CHAIRMAN GRAYBILL: You people are all presuming what Style and Drafting is going to do, and you cannot guess, because they haven't decided.

DELEGATE BATES: Well, Mr. Chairman, when it's candidates—and this, of course, may be different—but when it's candidates, they must be staggered. The first one—

CHAIRMAN GRAYBILL: That's right, Mrs. Bates.

DELEGATE BATES: But it isn't with this ballot, then?

CHAIRMAN GRAYBILL: Now, Mrs. Bates, I didn't say it wasn't. I said Style and Drafting is going to decide that matter and you're going to get a chance to vote on it. Now, this issue is whether or not we should adopt Mr. Aasheim's substitute motion to refer this to Style and Drafting and back to General Orders tomorrow.

Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman, I'm just asking for another day's time to think this matter over. That's the reason I'm asking to come back on General Orders.

CHAIRMAN GRAYBILL: Very well, is there other discussion? (No response) All in favor of Mr. Aasheim's motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it, and it's defeated. All right, now we're back on Mr. Schiltz's motion that the matter be referred to Style and Drafting and then, if it's all right, go directly to Order of Business Number 5; if not—there are errors—to be brought back to General Orders. So many as are in favor of Mr. Schiltz's motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Style and Drafting's Report Number 3 is rereferred to Style and Drafting under the terms of that motion.

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move that the committee consider the Style and Drafting Report Number 4 on the Executive at 9:00 a.m., March 8, 1972, and consider all other business on General Orders at the next sitting of the committee. And the sense of my motion is to rearrange the calendar and get on with the Bill of Rights work.

CHAIRMAN GRAYBILL: Mr. Murray's motion is to pass the Executive Article Style and Drafting Report until 9 o'clock tomorrow morning and start now with Bill of Rights. Is there any discussion? (No response) All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it.

Mr. Murray.

DELEGATE MURRAY: I move the committee recess until 3:30 this day.

CHAIRMAN GRAYBILL: A move of recess until 3:30. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: So ordered.

(Convention recessed at 3:20 p.m.—reconvened at 3:40 p.m.)

CHAIRMAN GRAYBILL: The Committee will be in session. The Chair would like to announce that the Chair anticipates an evening session tonight. I think I may have said that before, and I anticipate that. We'll probably wind up about 5 or 5:15, and we'll probably come back in at 7:30 or 8:00.

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move the committee rise and finally report.

CHAIRMAN GRAYBILL: On the Legislative Style and Drafting Article? The motion's been made to rise and finally report on the Legislative Style and Drafting Article. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Very well. Will the clerk please read the title of the report.

CLERK HANSON: "March 7, 1972. Mr. President: We, your Committee of the Whole, having had under consideration business under General Orders, Report Number 3 of the Committee on Style and Drafting, recommend as follows: that the committee rise and finally report on the Legislative Style and Drafting Report. Signed: Leo Graybill, Chairman."

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. President, I move that the Convention adopt the Committee of the Whole report.

PRESIDENT GRAYBILL: The motion has been made that the Committee of the Whole report be adopted. Is there discussion? (No response) All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered. Mr. Murray, we'll go on to Order of Business Number 11. Are there announcements?

DELEGATE MURRAY: Mr. President. Rules Committee meeting, 8 o'clock in the Rules room. I might add, Mr. President, that's 8 o'clock in the morning in the Rules Committee room.

PRESIDENT GRAYBILL: Rules, at 8 o'clock in the morning. Are there other announcements? (No response) Very well, we'll be back on Order of Business Number 1.
Mr. Murray.

DELEGATE MURRAY: Mr. President, I move that we advance to Order of Business Number 10, General Orders.

PRESIDENT GRAYBILL: Order of Business Number 10, General Orders, has been moved. Is there—we've been moved to—advanced to that. Is there any objection? (No response) All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: We're back on Order of Business Number 10.
Mr. Murray.

DELEGATE MURRAY: Mr. President, I move that the Convention resolve itself into Committee of the Whole for consideration of business under General Orders.

PRESIDENT GRAYBILL: The motion has been made to resolve this Convention into Committee of the Whole to consider the Bill of Rights proposal. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: The Ayes have it, and so ordered.

(Convention resolved into Committee of the Whole)

CHAIRMAN GRAYBILL: Ladies and gentlemen of the committee, we will start the Bill of Rights by having Mr. Dahood make a short statement, and then we'll consider it as usual, article by article—section by section.
Mr. Dahood, are you prepared to make your statement now, sir?

DELEGATE DAHOOD: I am prepared, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, fellow delegates. Bill of Rights Committee Proposal Number 8 is before you. We hope and trust that you have examined all 34 sections, that any questions that you might have with respect to any of those sections will be presented to us. We will welcome meaningful dialogue and debate. During the course of preparing the proposal that is before you, the committee received 46 proposals, heard 138 witnesses, and held more than 20 committee hearings. As a result, there are 34 sections in a proposed Bill of Rights for the State of Montana that promises to provide the citizens of the State of Montana with the finest, most expansive declaration of individual rights enacted by any state of the United States. The proposal before you will show that there were seven votes cast in opposition. With respect to the 34 sections, only 5 sections received negative votes; but nevertheless, when all was resolved, all 11 committee members unanimously pledged their support to all 34 sections without dissent. The committee members will move the various sections. I have placed before the Chair the sections and, opposite those sections, the committee members who will move those respective sections; and I would like to request the Chair to recognize the committee members in the order in which their names appear on the list that is before the Chair, commencing with Preamble and committee member George James. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. Mr. Clerk, will you read Bill of Rights Preamble Article. Read the title and the Preamble.

CLERK HANSON: "Montana Constitutional Convention, 1971-72, Bill of Rights Committee Proposal Number 8. Date reported, February 23, 1972; Wade Dahood, Chairman; Chet Blaylock, Vice-Chairman. Be it proposed by the Bill of Rights Committee that there be a new article on the Bill of Rights to read as follows: Preamble. We, the people of Montana, grateful to God for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunity, and to secure the blessings of liberty for this and future generations, do ordain and establish this Constitution." Mr. Chairman, the Preamble.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman, fellow delegates, guests, members of the staff. I think that we all took an active part in the presentation of this Preamble. It's not the usual form sort of thing that many states have. It expresses a reverence for our land, a pride in it; and it's an expression of a philosophy that we of the committee believe in. Mr. Chairman, I move that when this committee does rise and report, after having under consideration the Preamble, it recommends that the same be adopted.

CHAIRMAN GRAYBILL: Very well, you have before you a motion that the Preamble be adopted. Is there discussion?
Mr. Toole.

DELEGATE TOOLE: Mr. Chairman, I think the authors of this Preamble are to be congratulated. I think it represents the use of the English language at its very best; yet it is different, so far as I can determine, from any other state constitution. I think it deserves—they deserve great credit for the beauty of the terminology, and I support it and hope for its adoption.

CHAIRMAN GRAYBILL: Is there other discussion? (No response) Very well, members of the committee, you have before you for your consideration, upon the motion of Mr. James that when this committee does arise and report, after having had under consideration the Preamble to the Bill of Rights Article—the Preamble to the Constitution, that this committee recommend the same be adopted. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Mr. Clerk, please read Section 1 of the Bill of Rights Article.

CLERK HANSON: "Declaration of rights. Section 1, Popular sovereignty. All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole." Mr. Chairman, Section 1.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President [Chairman]. I move that when this committee does arise and report, after having had under consideration Section 1 of Proposal Number 8, it recommend the same be adopted.
Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President [Chairman], this reads exactly as the Section 1 of the 1889 Constitution. We had considered shortening the language; in fact, we had tried it out and the committee discussed this for some period of time. And we had some expression from some people who had come before our committee that they liked the language as it was, they liked the sound of the language. And so the—by a final—the vote of the committee, we decided to leave it just as it is in the 1889 Constitution, to be put into our new Constitution.

CHAIRMAN GRAYBILL: Is there any discussion of Section 1? (No response) Members of the committee, you have before you for your consideration, upon the motion of Mr. Blaylock that when this committee does arise and report, after having had under consideration Section 1 of the Bill of Rights Article, that this committee recommend the same be adopted. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: It's adopted. Will the clerk read Section 2.

CLERK HANSON: "Section 2, self-government. The people of the state have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish their Constitution and form of government whenever they may deem it necessary." Mr. Chairman, Section 2.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 2 of Proposal Number 8, it recommend that the same be adopted.

Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President [Chairman], we have changed this one so far as the language. We straightened it out some to make it read a little more simply. For instance, in the old Constitution, right after "have the" on the—line 21, we struck the words "so and", because we felt it means the same as exclusive; so we struck those two words. And then we took out the sentence—we say there they "may alter or abolish their Constitution and form a government whenever they may deem it necessary", and we have stricken from this language "provided such change be not repugnant to the Constitution of the United States". We felt that language was not necessary in this, that this is simply a declaration of our rights as citizens of this state.

CHAIRMAN GRAYBILL: Is there any discussion of Section 2? (No response) Members of the committee, you have before you for your consideration, upon the recommendation of Mr. Blaylock that when this committee does arise and report, after having had under consideration Section 2 of the Bill of Rights Article, that we recommend the same be adopted. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Section 2 is adopted. Section 3—please read, Mr. Clerk.

CLERK HANSON: Mr. Chairman. "Section 3, Inalienable rights. All persons are born free and have certain inalienable rights, which include the right of pursuing life's basic necessities; of enjoying and defending their lives and liberties; of acquiring, possessing, and protecting property; and of seeking their safety, health, and happiness in all lawful ways. In enjoying these rights, the people recognize corresponding responsibilities." Mr. Chairman, Section 3.

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: Mr. Chairman. I move that when this committee does arise and report, after having under consideration Section 3 of Proposal Number 8, it recommends that the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: In the inalienable rights section, we have basically kept it the same as the inalienable rights section in our present Constitution, except for some minor changes. If you'll turn to page 15 in our committee proposal, you can read along with me. The committee proposes, with two dissenting votes, that the former Article III, Section 3, be retained with few substantive changes. The committee struck language which was felt to be redundant. In addition, it is recommended that the right to pursue life's basic necessities be incorporated as a statement of principle. The intent of the committee on this point is not to create a substantive right for all the necessities of life to be provided by the public treasury. The committee heard considerable testimony from low-income people and social service people alike that the current state public assistance programs are not meeting the genuine needs of low-income people who, because of circumstances beyond their control, are unable to obtain basic necessities. Accordingly, it is hoped that the Legislature will have occasion to review these programs and upgrade them where necessary to provide full necessities to those in—who—in genuine need and to go—and to curb whatever abuses may exist in the programs. What was attempted in this part of the portion—the proposed section was a statement of principle that all persons have inalienable right to pursue the basic necessities of life, that there can be no right to life apart from the possibility of existence. Other inalienable rights were indicated, with only minor changes in style for purposes of clarity. In addition, an additional right, the right of seeking health, was incorporated in recognition of the fact that the right to life without health is a very sorry proposition. The final sentence of this section is—having been derived from Delegate Proposal Number 116. Testimony was received both favoring and opposing the inclusion of this statement of corresponding responsibilities in the declaration of rights. Some expressed the feeling that many were accepting rights without recognizing that they create obligations. Others were adamant that a declaration of rights should contain just that—the right of persons against governmental abuses and the rights of minorities against the power of unchecked majorities. The committee felt that the inclusion of such a statement does not infringe or impair the rights granted in the declaration of rights, but only accords a tone of responsibility in their exercise. In regard to basic necessities, we had about 17 people come before our committee. Many of them were of low income status economically, and we had social service workers. And it was our opinion that such a statement in the Bill of Rights as we have stated here does not suggest that the state pay out of the public treasury for those basic necessities, such as housing, medical care and nourishment, but that this is more or less a constitutional sermon so that maybe the Legislature, from time to time, can improve and update—update and upgrade our public assistance programs from time to time as they see fit. Of course, the right to health was incorporated in the last sentence and the second to the last sentence of our inalienable rights section. I didn't look it up in the dictionary; but an inalienable right is something, in my estimation, that comes to each one of us just because we're here and we're human beings. Even if there was no such thing as a government, all of us would have these rights. I will stop at this point, and if there's any comments we can hear them, and I move that we adopt this section. Thank you.

CHAIRMAN GRAYBILL: Is there further debate?

Mr. Kelleher. No?

Mr. Burkhardt.

DELEGATE BURKHARDT: I believe that you have, Mr. Chairman, a copy of an amendment for this section that does not delete anything. It's the addition of eight words, and I wonder if the clerk could read it.

CHAIRMAN GRAYBILL: Will the clerk please read Mr. Burkhardt's amendment.

CLERK HANSON: "Mr. Chairman. I move to amend Section 3, Bill of Rights Committee proposal, on page 4, line 26, by inserting, after the word 'include', the following words—quote: 'the right to a clean and healthful environment'—comma, end quote. Signed: Burkhardt."

DELEGATE BURKHARDT: Mr. Chairman.

CHAIRMAN GRAYBILL: Just a moment. Mr. Burkhardt wishes to make an amendment on line 26, after the word "include", right at the end of the line—"which include"—and he wants to add the words "the right to a clean and healthful environment" before the phrase "the right to pursuing life's basic necessities", et cetera.

Mr. Burkhardt, your amendment is allowed. Go ahead and discuss it.

DELEGATE BURKHARDT: Mr. Chairman. This is a statement that we, as a body, have already adopted in another section of our Constitution, in our Natural Resources section. We have the statement: "It shall be the duty of the State of Montana and each person to maintain and improve a clean and healthful environment." And it seems to me that it's simply striking the other side of the balance to put it here in our Bill of Rights, to recognize that this is, for the time in which we're living and for the foreseeable future, one of the inalienable rights that we hope to assure for our posterity. I don't care to belabor the issue. It seems to me it's self-evident. I would reserve the right to close if there is debate on the issue.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I would ask Delegate Burkhardt if he will yield to a question.

DELEGATE BURKHARDT: I will.

DELEGATE DAHOOD: Delegate Burkhardt, I would like to inquire, on behalf of our committee, if by this proposed amendment it is your intention to provide the citizens of the State of Montana with the independent right to initiate a lawsuit when his own health and his own property is not affected within the contemplation of the present law?

DELEGATE BURKHARDT: Mr. Dahood, you have much experience as a trial lawyer and I may be somewhat at a disadvantage in handling the question, but I will try to answer it as I understand it. I read the Preamble to this section on the Bill of Rights and believed it. I think it's a beautiful statement, and it seems to me that what I am proposing here is in concert with what's proposed in that Preamble; that what we are talking about here is the goal toward which we try to grow as a society. I do not see it as an overt attempt to slip in with the opportunity to sue.

DELEGATE DAHOOD: Very fine. Thank you very much. Mr. Chairman, I certainly want to comment that, with respect to the basic concept itself, it is a concept with which no one can disagree, in my judgment, but I certainly would like to hear some of the other delegates with respect to the proposed amendment. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there further discussion?
Mrs. Eck.

DELEGATE ECK: Our Bill of Rights Committee discussed environmental issues at some length and decided that we really shouldn't include a section on environmental bill of rights, which I think that a great many of us had expected to do, since this would be covered by the Natural Resources Committee. We did submit a statement to the Natural Resources Committee which included, I think, a slightly stronger statement than what we've included here. We also concurred pretty much with the statement that they came up with, especially their statement of what the duty of the state is in regards to maintaining a clean environment, a healthful environment, a high-quality environment—whatever you want to call it. It's my understanding that they quite purposely did not include a statement of each individual's rights, believing that this kind of a statement really fitted better into the Bill of Rights. We could include a separate statement on it, but I think that with what has gone before, it's not really necessary; and I certainly do concur in Mr. Burkhardt's amendment here as being quite appropriate to what the intention of it was in our committee and I think also the intention of the Natural Resources Committee. Thank you.

CHAIRMAN GRAYBILL: Is there further discussion?
Mr. Toole.

DELEGATE TOOLE: Mr. Chairman, would Mr. McNeil yield to a question on this subject?

CHAIRMAN GRAYBILL: Mr. McNeil?

DELEGATE McNEIL: I yield.

DELEGATE TOOLE: Mr. McNeil, do you think this tends to reinforce your article in Natural Resources, or how do you regard putting this in with—in the light of what your own committee did?

DELEGATE McNEIL: I can't speak for the committee; I can only speak as an individual. I introduced a delegate proposal which would have given each individual the right to a quality environment. I have already spoken on this "clean and healthful". I'm afraid that that isn't as strong as what we really want, but if that's the will of the Convention and as strong as they think they can pass, why, I would agree with it.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Well, Mr. Chairman, I would want the minutes and the record of this Convention to show that this amendment does not have as one of its purposes an attempt to circumvent the votes that were taken with respect to the Natural Resources motions that attempted to put in theories with respect to the environment, that were rejected by a majority of these constitutional delegates. And I trust that this is not the intention of the mover of the amendment; and if that be correct, then I would have no objection to the amendment.

CHAIRMAN GRAYBILL: Mr. Burkhardt, do you care to respond?

DELEGATE BURKHARDT: Am I closing or just responding, or what?

CHAIRMAN GRAYBILL: Well, you're probably closing, since I don't see anyone else up.

DELEGATE BURKHARDT: The way I figure it, Bob Kelleher owes all of us an hour and a half, and one of these days I'm going to take it, but not now. (Laughter) Just that I think running through all of us is a concern to provide for future years, and I think industry joins us in this concern. They are, after all, human beings whose children must grow up in our country; and already our major industries are on record in the direction and beyond what we're stating here. So I would say that I did not vote the other day for the public trust concept because I felt it had been an emotional, a distorted issue and that it would be misunderstood; and it seems to me that we are providing here, though, a clear intent. It does present the right of every person. And we've already talked about the duties of persons, and it's nice to balance it with this right. I close with that.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. Burkhardt's motion to add the terms—the words "the right to a clean and healthful environment" on line 26, page 4, of the Bill of Rights Article, Section 3. So many—

DELEGATE KAMHOOT: Roll call.

CHAIRMAN GRAYBILL: Mr. Kamhoot wants a roll call vote. So many as are in favor of Mr. Burkhardt's amendment, vote Aye; so many as are opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the ballot.

Aasheim	Aye
Anderson, J.	Aye
Anderson, O.	Aye
Arbanas	Aye
Arness	Absent
Aronow	Aye
Artz	Aye
Ask	Aye
Babcock	Aye
Barnard	Aye
Bates	Absent
Belcher	Excused
Berg	Aye
Berthelson	Aye
Blaylock	Aye
Blend	Aye
Bowman	Aye
Brazier	Aye
Brown	Aye
Bugbee	Aye
Burkhardt	Aye
Cain	Absent
Campbell	Aye
Cate	Aye
Champoux	Aye
Choate	Aye
Conover	Aye
Cross	Aye
Dahood	Aye
Davis	Aye
Delaney	Aye
Driscoll	Aye
Drum	Absent
Eck	Aye
Erdmann	Aye
Eskildsen	Excused
Etchart	Aye
Felt	Aye
Foster	Aye
Furlong	Absent
Garlington	Aye
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Aye
Harlow	Absent
Harper	Aye
Harrington	Aye
Heliker	Aye
Holland	Absent
Jacobsen	Aye
James	Absent
Johnson	Nay
Joyce	Aye
Kamhoot	Nay
Kelleher	Aye
Leuthold	Aye
Loendorf	Aye
Lorello	Aye
Mahoney	Absent
Mansfield	Aye
Martin	Aye
McCarvel	Nay
McDonough	Nay
McKeon	Aye
McNeil	Aye

Melvin	Aye
Monroe	Aye
Murray	Aye
Noble	Aye
Nutting	Excused
Payne	Aye
Pemberton	Nay
Rebal	Aye
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Aye
Romney	Aye
Rygg	Aye
Scanlin	Absent
Schiltz	Aye
Siderius	Aye
Simon	Aye
Skari	Aye
Sparks	Aye
Speer	Aye
Studer	Aye
Sullivan	Aye
Swanberg	Aye
Toole	Aye
Van Buskirk	Aye
Vermillion	Aye
Wagner	Aye
Ward	Aye
Warden	Absent
Wilson	Aye
Woodmansey	Aye
Mr. Chairman	Aye

CLERK HANSON: Mr. Chairman, 79 delegates voting Aye, 7 voting No.

CHAIRMAN GRAYBILL: 79 delegates having voted Aye and 7 No, the amendment to add that phrase to Section 3 passes—or is adopted. Is there any other discussion of Section 3?

Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, I move to substitute the word "conceived" for the word "born" on line 25.

Mr. Chairman.

CHAIRMAN GRAYBILL: Just a minute, Mr. Kelleher. Since you didn't send that up, I have to write it out here.

DELEGATE KELLEHER: C-O-N-C-E-I-V-E-D.

CHAIRMAN GRAYBILL: B-O-R-N? Yes, Mr. Kelleher. Mr. Kelleher makes a motion to amend line 25 by striking the word "born" and putting in the word "conceived".

DELEGATE KELLEHER: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: My purpose in this is, what's the use of having rights of the living if I don't have the right to be born? A most defenseless human being in the world is the human fetus, which is dependent upon its own mother for protection. And lastly, I would leave to the courts the meaning of when a—quote—"person"—close quote—as used in line 25, is conceived.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I stand in opposition to the amendment. What Delegate Kelleher is attempting to do at this time is, by constitutional command, prohibit abortion in the State of Montana. That issue was brought before the committee. We decided that we should not deal with it within the Bill of Rights. It is a legislative matter insofar as we are concerned. The world of law has for centuries conducted a debate as to when a person becomes a person, at what particular state, at what particular time; and we submit that this particular question should not be decided by this delegation. It has no part at this time within the Bill of Rights of the Constitution of the State of Montana, and we oppose it for that reason.

CHAIRMAN GRAYBILL: Very well, Mr. Kelleher, you may close.

DELEGATE KELLEHER: May I have five seconds, please, for a roll call vote?

CHAIRMAN GRAYBILL: All right, we'll have a roll call vote. The question now arises on Mr. Kelleher's amendment to substitute the word "conceived" for the word "vote"—or for the word "born". So that the first sentence would read: "All persons are conceived free and have certain inalienable rights." So many as shall be in favor of Mr. Kelleher's motion, vote Aye; and so many as shall be opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the ballot.

Aasheim	Nay
Anderson, J.	Nay
Anderson, O.	Nay
Arbanas	Absent
Arness	Absent
Aronow	Nay
Artz	Aye
Ask	Nay
Babcock	Nay
Barnard	Nay
Bates	Absent
Belcher	Excused
Berg	Nay
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Nay
Brazier	Nay
Brown	Nay
Bugbee	Nay
Burkhardt	Nay
Cain	Absent
Campbell	Nay
Cate	Aye
Champoux	Nay
Choate	Nay
Conover	Nay
Cross	Aye
Dahood	Nay
Davis	Nay
Delaney	Nay
Driscoll	Aye
Drum	Absent
Eck	Nay
Erdmann	Nay
Eskildsen	Excused
Etchart	Aye
Felt	Nay
Foster	Nay
Furlong	Nay
Garlington	Nay
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Nay
Harlow	Absent
Harper	Nay
Harrington	Aye
Heliker	Nay
Holland	Nay
Jacobsen	Nay
James	Absent
Johnson	Nay
Joyce	Aye
Kamhoot	Nay
Kelleher	Aye
Leuthold	Nay
Loendorf	Nay
Lorello	Nay
Mahoney	Nay
Mansfield	Aye
Martin	Nay
McCarvel	Nay
McDonough	Nay
McKeon	Absent
McNeil	Aye
Melvin	Nay
Monroe	Aye
Murray	Nay
Noble	Nay
Nutting	Excused
Payne	Nay
Pemberton	Nay
Rebal	Nay
Reichert	Nay
Robinson	Nay
Roeder	Aye
Rollins	Nay
Romney	Nay
Rygg	Nay
Scanlin	Absent
Schiltz	Aye
Siderius	Nay
Simon	Nay
Skari	Absent
Sparks	Nay
Speer	Nay
Studer	Aye
Sullivan	Nay
Swanberg	Nay
Toole	Nay
Van Buskirk	Aye
Vermillion	Nay
Wagner	Absent
Ward	Nay
Warden	Nay
Wilson	Nay
Woodmansey	Nay
Mr. Chairman	Nay

CLERK HANSON: Mr. Chairman, 15 delegates voting Aye, 71 voting No.

CHAIRMAN GRAYBILL: 71 having voted No and 15 delegates having voted Aye, Mr.

Kelleher's motion fails. Is there other discussion of Section 3? (No response) Very well, members of the committee, you have before you, on the recommendation of Mr. Monroe that when this committee does arise and report, after having had under consideration Section 3, that it recommend the same be adopted as amended. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Section 3 is adopted. Mr. Clerk, will you please read Section 4.

CLERK HANSON: "Section 4, Individual dignity. The dignity of the human being is inviolable. No person shall be denied the equal protection of the law nor be discriminated against in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas, by any person, firm, corporation or institution; or by the state, its agencies or subdivisions." Mr. Chairman, subsection—Section 4.

CHAIRMAN GRAYBILL: Very well, Mrs. Mansfield.

DELEGATE MANSFIELD: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 4 of the Bill of Rights, it recommends it be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Mansfield.

DELEGATE MANSFIELD: The committee unanimously adopted this section with the intent of providing a constitutional impetus for the eradication of public and private discrimination based on race, color, sex, culture, social origin or condition, or political or religious ideas. The provision, quite similar to that of the Puerto Rico declaration of rights, is aimed at prohibiting private as well as public discrimination in civil and political rights. Considerable testimony was heard concerning the need to include sex in any equal protection or freedom from discrimination provisions. The committee felt that such inclusion was eminently proper and saw no reason for the state to wait for the adoption of the federal equal rights amendment or any amendment which would not explicitly provide as much protection as this provision. The word "culture" was incorporated specifically to cover groups whose cultural base is distinct from mainstream Montana, especially the American Indians. Social origin or condition was included to cover discriminations based on status of income and standard of living. Some fears were expressed that the wording "political or religious ideas" would permit persons who supported the right to work in principle to avoid union membership. Such is not the intent of the committee. The wording was incorporated to prohibit public and private concerns discriminating against persons because of their political or religious beliefs. The wording of this section was derived almost verbatim from the Delegate Proposal Number 61. The committee felt that this proposal incorporated all features of all the delegate proposals, numbers 10, 32, 50 and 51, on the subjects of equal protection of the laws and the freedom from discrimination. The committee is well aware that any broad proposal on these subjects will require considerable statutory embellishment. It is hoped that the Legislature will enact statutes to promote effective eradication of the discriminations prohibited in this section. The considerable support for and the lack of opposition to this provision indicates its import and advisability. Mr. Chairman, I move that when this committee does rise and report, after having this under consideration, Section 4, of the Bill of Rights, it recommends its adoption. Thank you, Mr. President [Chairman].

CHAIRMAN GRAYBILL: Very well, is there discussion of Section 4?

Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. I move to delete from Section 4, on line 8, the words at the end of the line "by any person", and on line 9 the words "firm, corporation or institution; or".

CHAIRMAN GRAYBILL: Line 8 and 9. Very well, Mr. Habedank moves to delete, on lines 8 and 9 of Section 4, the phrase "by any person, firm, corporation or institution—semicolon—or"—so that the last part of the sentence would read: "nor be discriminated against in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas by the state, its agencies or subdivisions"—the upshot of this being to take out discrimination by persons, firms and corporations from the protections of the Bill of Rights.

Mr. Habedank.

DELEGATE HABEDANK: Mr. President [Chairman], it is my opinion that the words "by any person, firm or corporation or institution" can be opening a lot of challenges to the rights of other people to privacy, to things which we have considered dear. I happen to be a very—partly Scandinavian. I belong to an organization called Sons of Norway. They exclude people who aren't Norwegians, although you can go a long ways in finding out who—if you have some Norwegian blood in you. But the point I'm trying to make is that I feel that this amendment, as it is written, can be construed to prohibit organizations which are incorporated from limiting their membership. It can cause me, as an individual, to have to associate with people that I choose not to associate with. And I think the federal Constitution, as it is being interpreted by the United States Supreme Court at the present time, carries this matter far enough, and I am therefore moving the deletion of these words.

CHAIRMAN GRAYBILL: Is there discussion?

Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. I can appreciate Delegate Habedank's concern, because I think that concerned us all, but that is not the intent of Section 4 with respect to individual dignity. We must keep in mind that we have a federal Civil Rights Act of 1964 which encompasses some of the fears that have been expressed by the gentleman delegate who has moved the amendment to strike that particular phraseology. There is no intent within this particular section to do anything other than to remove the apparent type of discrimination that all of us object to with respect to employment, to rental practices, to actual associationship in matters that are public or matters that tend to be somewhat quasi-public. With respect to a religious organization, with respect perhaps to the Sons of Norway or the Sons of Scandinavia, of course, there would necessarily be qualifications that an individual would have to meet before he would be admitted to membership. That type of private organization is certainly not within the intendment of the committee in submitting Section 4. The intent of Section 4 is simply to provide that every individual in the State of Montana, as a citizen of this state, may pursue his inalienable rights without having any shadows cast upon his dignity through unwarranted discrimination. And we submit that the concern of this date and of this Convention with respect to discrimination should not be reflected simply by having limitations upon the state and its agencies, but also by having those same limitations upon the private agencies that live within the society of the State of Montana. I oppose the amendment.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President [Chairman], I also oppose the amendment. I believe—I don't think that we can logically say that we'll just leave it to the state; and so many of these that are going to be—would be stricken if this amendment were to pass are the very firms that are hiring many people and, where we are concerned as Montana citizens, where discrimination may take place, so I do oppose the amendment.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Would Mr. Dahood yield, please?

CHAIRMAN GRAYBILL: Mr. Dahood, will you yield to a question?

DELEGATE DAHOOD: Mr. Chairman, I yield.

DELEGATE LOENDORF: Mr. Dahood, correct me if I'm wrong, but it's my understanding that under the federal equal protection of the laws clause, which is the same as you have here, that everything you have after the word "equal protection of the law" would really be subsumed in that first provision and everything you've said after that would really be unnecessary, although I have no objection to it. It would go without saying, is that correct?

DELEGATE DAHOOD: No person shall be denied the equal protection of the law.

DELEGATE LOENDORF: Right. If you put a period there—

DELEGATE DAHOOD: That's correct.

DELEGATE LOENDORF: —the meaning would be the same.

DELEGATE DAHOOD: But I think when we're dealing with this type of right, Delegate Loendorf, and we are dealing with something that is this basic, to an orderly and progressive society perhaps sometimes the sermon that can be given by constitution, as well as the right, becomes necessary. And I think it takes that type of language to convey the intent of this committee. Thank you for the question.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Yes, will Mr. Dahood yield to a question?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: Mr. Chairman, I yield.

DELEGATE HOLLAND: Mr. Dahood, I'm a little bit like Mr. Habedank. I understand that we don't want discrimination in employment, things like that, but could—can the intent of this be that, for instance, that all of the ladies would—should be—can join the Elks or the Masons or the strictly men organizations? I mean, you say any corporation—or any person or any corporation—I presume many would apply to that—or any institution. There are several lady organizations, several male organizations, all of which are thereby—

DELEGATE DAHOOD: Mr. Holland, in answer to your question, no, that is not our intent. There are certain requirements, certain qualifications, certain matters, I suppose, that might fall within the term of legitimate discrimination that are not covered by this particular section. Anything that falls within the realm of common sense—I think you've indicated situations where common sense would have to indicate that the qualifications that would be set for membership are proper, and in those circumstances I would not expect Section 4 to have any effect. Thank you, Mr. Holland.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Would Mr. Dahood yield to another question?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE HARPER: I think we see what Mr. Habedank is getting at. This says that "No person shall be denied the equal protection of the law". That's clear. Then it continues, "nor be discriminated against"—and this is the phrase—"in the exercise of his civil or political rights". Now is that—does that, in your interpretation, rule out things like girls joining the YMCA and so forth? Aren't civil rights things that the Legislature has to deal with?

DELEGATE DAHOOD: Basically, Delegate Harper, that is correct. And I do not think at this time in America we have an all-inclusive definition of civil rights. Thank you for the question.

CHAIRMAN GRAYBILL: Is there further discussion of Section 4?

Mrs. Eck.

DELEGATE ECK: Mr. Chairman, I'd also like to point out the fact that this does include protection from religious discrimination, which previously had been in the religious—in the section on freedom of religion; and it is covered here and it is not covered again there.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Will Mr. Dahood yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE ROBINSON: Mr. Dahood, I'm concerned about this proposal because of some information that was received that it might be a nonself-executing provision as you have it written. And that's why, in my proposal, I followed what Illinois did and provided that this would be a self-executing provision. There is some concern that as you have it written now it would take complete legislative implementation to make it effective. Is that true?

DELEGATE DAHOOD: Delegate Robinson, I think the question is sound, but I must answer by saying in my judgment that is not true for these reasons. I think the Illinois section, if memory serves correct, added a paragraph to indicate that the Legislature would set guidelines for the enforcement of that particular right. In any event, constitutions are based on the premise that they are presumed to be self-executing, particularly within the Bill of Rights. If the language appears to be prohibitory and mandatory, as this particular section is intended to be, then in that event, the courts in interpreting the particular section are bound by that particular presumption and they must assume, in that situation, that it is self-executing. There was a case in Montana some 60 years ago that involved a provision of our Bill of Rights that had to do with an individual right, and there the Supreme Court said that was self-executing and a citizen could enforce it without any type of legislative implementation. Does that answer your question?

DELEGATE ROBINSON: Yes. Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Will Mr. Dahood yield to one more question?

DELEGATE DAHOOD: Mr. Dahood will yield to one more question.

DELEGATE ROBINSON: If Section 3, then, is self-executing, where we are stating a right against discrimination, why would not Section 4—rather, why would not Section 3, where we included the right to a clean and healthful environment? What I—you know, it seems to me that your concern in adding this thing in subsection 3 is perhaps it is not a self-executing thing, and then in 4, perhaps it is. I—it seems that for—in the Bill of Rights, what would apply to Section 4 would apply to Section 3.

DELEGATE DAHOOD: I understand your question. It's very good, but I am being consistent. What we have added to Section 3 is, in my judgment, self-executing with respect to an individual who personally is affected with respect to his health and to his property. And I think the statement is a good one; I think it's an amendment that certainly ought to be in our Bill of Rights. I just wanted to be sure that we were not trying, through some type of subrosa method, bring in the public trust doctrine which was discredited here on the Convention floor. Thank you, Delegate Robinson.

CHAIRMAN GRAYBILL: Is there further discussion of Section 4? (No response) Very well. Members of the committee, you have before you for your consideration, upon the recommendation of Mrs. Mansfield that when this committee does arise and report, after having had under consideration Section 4—just a minute, Mr. Habedank.

Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, we have an amendment to be disposed of first.

CHAIRMAN GRAYBILL: Oh, so we do. Excuse me. Mr. Habedank has an amendment to strike the words "by any person, firm, corporation, or institution; or", on lines 8 and 9. Is there further discussion?

DELEGATE FOSTER: Roll call.

CHAIRMAN GRAYBILL: You want a roll call vote? Very well, so many as are in favor of the motion to strike those words, vote Aye; and so many as are opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Will the clerk take the ballot.

Aasheim	Nay
Anderson, J.	Aye
Anderson, O.	Nay
Arbanas	Nay
Arness	Absent
Aronow	Nay
Artz	Nay
Ask	Nay
Babcock	Nay
Barnard	Nay
Bates	Nay
Belcher	Excused
Berg	Nay
Berthelson	Aye
Blaylock	Nay
Blend	Nay
Bowman	Nay
Brazier	Nay
Brown	Aye
Bugbee	Nay
Burkhardt	Nay
Cain	Nay
Campbell	Nay
Cate	Nay
Champoux	Nay
Choate	Nay
Conover	Nay
Cross	Nay
Dahood	Nay
Davis	Nay
Delaney	Aye
Driscoll	Nay
Drum	Absent
Eck	Nay
Erdmann	Nay

Eskildsen	Excused
Etchart	Nay
Felt	Nay
Foster	Nay
Furlong	Nay
Garlington	Nay
Gysler	Absent
Habedank	Aye
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Nay
Harlow	Absent
Harper	Nay
Harrington	Nay
Heliker	Nay
Holland	Nay
Jacobsen	Nay
James	Nay
Johnson	Aye
Joyce	Nay
Kamhoot	Aye
Kelleher	Absent
Leuthold	Nay
Loendorf	Nay
Lorello	Nay
Mahoney	Aye
Mansfield	Nay
Martin	Nay
McCarvel	Nay
McDonough	Nay
McKeon	Absent
McNeil	Nay
Melvin	Nay
Monroe	Nay
Murray	Nay
Noble	Aye
Nutting	Excused
Payne	Nay
Pemberton	Nay
Rebal	Nay
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Nay
Romney	Aye
Rygg	Aye
Scanlin	Nay
Schiltz	Nay
Siderius	Nay
Simon	Nay
Skari	Absent
Sparks	Nay
Speer	Nay
Studer	Aye
Sullivan	Nay
Swanberg	Nay
Toole	Nay
Van Buskirk	Nay
Vermillion	Nay
Wagner	Absent
Ward	Nay
Warden	Nay
Wilson	Aye
Woodmansey	Nay
Mr. Chairman	Nay

CLERK HANSON: Mr. Chairman, 13 delegates voting Aye, 76 voting No.

CHAIRMAN GRAYBILL: 76 delegates having voted No and only 13 Aye, Mr. Habedank's amendment fails. We're discussing Section 4. Are there other amendments or other discussion? (No response) Very well. Members of the committee, you have before you on the recommendation of Mrs. Mansfield that when this committee shall arise and report, after having had under consideration Section 4 of the Bill of Rights proposal, that this committee recommend that it be adopted. So many as shall be in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Will the clerk read Section 5.

CLERK HANSON: "Section 5, Freedom of religion. The State of Montana shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." Mr. Chairman, Section 5.

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 5, Proposal 8, it recommend that the same be adopted.

Mr. Chairman, the committee decided unanimously to substitute the concise wording of the freedom of religion clause of the federal First Amendment. Much testimony was heard on this provision, most of it on the subject of public aid to church-related schools. The committee felt that this issue should be dealt with, as it was, by the Education and Public Lands Committee and that the provision incorporated into the declaration of rights should restrict itself to guaranteeing the free exercise of religion and prohibiting the establishment of any religion. The committee felt especially strong about removing the anti-Mormon biases reflected in the previous wording of Article III, Section 4. This can be found on page 2 of our present Constitution, Section 4. Beyond that, the committee noted that since the religions which historically were persecuted were those alleged to violate or threaten the good order, peace and safety of the state, such passages were dubious of merit in a statement of religious liberty. Accordingly, both, of considerable length, were deleted. What remains is the tradition-ridden guarantee of religous liberty adopted by the first U.S. Congress in 1789 as part of the federal Bill of Rights. Realizing the legal, social, political problems of the church-state area are exceedingly complex, it is not urged that this provision will simplify their resolution. However, it will certainly not make the understanding of these compelling and sometimes paradoxical concerns more difficult. We've, as it says, substituted the First Amendment clause in regard to religious liberty. It makes it a lot more—simpler to understand, in my estimation. The present Section 4 of Article III in our Constitution is some 129 words, and in my estimation it is not very clear. Our committee—and members of the committee, as well as many people in the Convention, have received letters from people saying that they feel that is clear. I do not agree with that, and some members of my committee do not agree with that either. Some people have even went as far as saying they would not be able to vote for the Constitution—the adoption of the Constitution—if we altered Section 4 in the present Constitution in its present form. We feel that the federal amendment in regard to religous freedom is quite adequate and has served us for almost 200 years. I move for its adoption, Mr. President [Chairman].

CHAIRMAN GRAYBILL: Is there discussion of this article—this section?
Mr. Rollins.

DELEGATE ROLLINS: I feel I ought to rise and give thanks for the Mormons, in spite of the fact that you are only 82 years behind times, because the Mormons abandoned it officially in 1890 themselves.

CHAIRMAN GRAYBILL: Very well. Members of the committee, you have before you for your consideration, upon the motion of Mr. Monroe that when this committee does arise and report, after having had under consideration Section 5 of the Bill of Rights, that it recommend the same do pass—or the same be adopted. So many as shall be in favor of that motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: Section 5 is adopted. Section 6, Mr. Clerk.

CLERK HANSON: "Section 6, Freedom of assembly. The people shall have the right peaceably to assemble, petition for redress or to protest governmental action." Mr. Chairman, Section 6.

CHAIRMAN GRAYBILL: Mrs. Mansfield.

DELEGATE MANSFIELD: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 6 of the Bill of Rights, it recommends its adoption.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Mansfield.

DELEGATE MANSFIELD: The committee unanimously recommended that the former Article III, Section 26, be adopted with only one stylistic change. The basic right to assemble for redress of grievances by petition or remonstrance remains unchanged. The wording was tightened up a little and the phrase "protest governmental action" was substituted for the phrasing "apply to those invested with the powers of government for redress of grievances by remonstrance"—unquote. In doing so, the committee notes the paramount position of the right and the invaluable function its responsible exercise plays in a democratic society. Mr. Chairman, I move the adoption of this Section.

CHAIRMAN GRAYBILL: Very well. Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, I move to amend Section 6, page 5, line 16, by adding, after the word "or", the word—quote—"peaceably"—close quote.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. McNeil's amendment has the effect of adding, at line 16 on page 5, after the word "or", the word "peaceably".

So that the sentence reads: "The people shall have the right peaceably to assemble, petition for redress or peaceably protest governmental action."

Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, I think the amendment speaks for itself. I agree with the committee's stylistic change and updating of the language. However, I would not want the absence of the word "peaceably" to imply any endorsement of violent protest of governmental action.

CHAIRMAN GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman, the word "peaceably" is already on line 15, and I believe it already applies to all of those other words.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, I must disagree with that, because of the conjunctive "or". The "peaceably" modifies "assemble"; it does not affect petition for redress. And I don't want there to be any doubt that the protesting of governmental action must likewise be peaceable.

CHAIRMAN GRAYBILL: Is there any further discussion? All in favor of Mr. McNeil's amendment to add the word "peaceably" on line 16 before—"peaceably protest governmental action", please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: Very well, that amendment is adopted. Is there—are there further amendments to Section 6?

DELEGATE AASHEIM: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: Will Mr. Dahood yield to a question?

CHAIRMAN GRAYBILL: Mr. Dahood, will you yield?

DELEGATE DAHOOD: I do yield, Mr. Chairman.

DELEGATE AASHEIM: Just a matter of context here. Why didn't you say "to assemble peaceably", rather than to put the "peaceably" first? Why didn't you say "to assemble peaceably"?

DELEGATE DAHOOD: Or "to assemble peaceably"?

DELEGATE AASHEIM: On page—on line 15, yes.

DELEGATE DAHOOD: Delegate Aasheim, are you referring to the old wording of the Constitution?

DELEGATE AASHEIM: Well, it just seems like you are putting the adverb in—out of place. You assemble peaceably, don't you?

DELEGATE DAHOOD: Well, I frankly had not considered it. The Vice-Chairman, who, of course, is our expert in grammar and English composition, indicated to us that that was proper wording. We accepted it; and I fail to see where the meaning can in any way be misconstrued. I thought the amendment proposed by Delegate McNeil would do away with any ambiguity, but if somebody thinks the syntax can be corrected and improved, I have no objection to it.

DELEGATE AASHEIM: A question, then. Do you want "peaceably petition", "peaceably redress"? Is that what your intent was?

DELEGATE DAHOOD: Was that our intent?

DELEGATE AASHEIM: Yes.

DELEGATE DAHOOD: Yes, our intent was that in exercising any of the rights that are set forth in Section 6, that it must be done in a lawful, orderly and peaceable manner. And none of us experienced the ambiguity that's been expressed on the floor.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE ROBERT HANSON: Mr. President [Chairman], I think if you'll—if Mr. Aasheim will look at the present wording in Section 26 of our present Constitution, he will see that it says "the people shall have the right peaceably to assemble", and I don't think we plan on making any changes in the language.

CHAIRMAN GRAYBILL: Mrs. Cross.

DELEGATE CROSS: Mr. Chairman, the word "peaceably", with that ending, is an adverb; and adverbs modify all forms of verbs; and infinitives are forms of verbs. So I don't see what the question is in this particular sentence. (Laughter)

CHAIRMAN GRAYBILL: I think the journal will at least be clear. Is there any other question? Very well, members of the committee, you have before you for your consideration, upon the motion of—Mrs. Mansfield, is this yours?

DELEGATE MANSFIELD: (Inaudible)

CHAIRMAN GRAYBILL: Okay—of Mrs. Mansfield—that when this committee does arise and report, after having had under consideration Section 6, as amended, that it recommend the same be adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Will the clerk read Section 7.

CLERK HANSON: "Section 7, Freedom of speech, expression and press. No law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or slander, the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts." Mr. Chairman, Section 7.

CHAIRMAN GRAYBILL: Mrs. Mansfield.

DELEGATE MANSFIELD: Mr. Chairman. I move that when this committee does rise and report, after having under consideration Section 7 in the Bill of Rights, it recommends the same to be adopted.

Mr. President [Chairman], Section 7. The committee unanimously proposes the adoption of the former Article III—this is on page 19—Section 10, with one substantive change. The freedom of speech is extended, in line with federal decisions under the First Amendment, to cover the freedom of expression. Hopefully this extension will provide impetus to the courts in Montana to rule on various forms of expression similar to the spoken word, and the ways in which one expresses his unique personality, in an effort to rebalance the general backseat status of states in the safeguarding of civil liberties. The committee wishes to stress the primacy of these guarantees in the hope that their enforcement will not continue merely in the wake of the federal case law. Other minor changes made in the section were merely stylistic in nature, except for the inclusion of the word "slander", to provide protection against abuses of the free speech and press guarantees in cases of spoken as well as written word. The committee retained the established principle that in libel trials, the jury shall decide the law and the facts, on the theory that the removal of this clause might be construed as the denial of a right. The principle is continued, with the note that in the cases of libel it is necessary for the prosecutor to convince both the court and the jury before the free speech and press protections are overridden—Harrington versus Butte Miners Company, et al, in the Montana 550, 554, 139, page 451. I move this adoption, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there any discussion?
Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman, would Mrs. Mansfield yield to a question?

CHAIRMAN GRAYBILL: Mrs. Mansfield?

DELEGATE MANSFIELD: If I can answer it.

DELEGATE LOENDORF: Mrs. Mansfield, I've read your comment—and I haven't read Harrington versus the Miners Union, though—but I'm concerned about juries determining questions of law in libel cases. Would you just elaborate a bit on the reasons the committee retained that?

DELEGATE MANSFIELD: You know, I think I'll turn that over to Mr. Dahood. He's our legal—

DELEGATE DAHOOD: Thank you, Mrs. Mansfield.

CHAIRMAN GRAYBILL: Mr. Dahood, you may have the floor.

DELEGATE DAHOOD: Very fine, Mr. Chairman. Thank you very much. In response to the question, let me say that the committee initially applied the same reasoning that is in the mind of Delegate Loendorf at this time, but research indicates to us—does indicate to us there is a historical reason for the language as contained in that section to the effect that the jury shall determine both the law and the fact. I think to the trained legal mind, at first blush it seems inconceivable that a jury shall have the right to determine the law. But apparently in the common law days of England, the right of free speech was considered so precious that the right, with respect to whether or not the law should apply in a particular case, was left to the jury rather than to the court so that there would be no abuse of that sacred right. That particular right apparently was carried over from England to the United States, and the framers of the current Montana Constitution and Bill of Rights carried that protection into the section on free speech. There was a Montana case, which Mrs. Mansfield cited in her rationale supporting Section 7, and that particular concept was set forth in that case. We do not think that it is going to change the manner in which cases involving libel and slander are tried in the State of Montana, since the juries are still expected to take their guidance with respect to the law from the court. But it does provide the jury with leeway in the event that they should think, within their community conscience as jurors, that in this particular instance, even though there might be a technical violation of the law, the circumstances are such that there should not be any type of penalty for that violation. The jury would have the right, then, to disregard the technical aspects of the law and find that there has not been any libel in that instance, either in a case of civil libel or criminal libel. To be consistent, to expand upon the right, we've included slander within that rationale, inasmuch as juries tend to follow that particular concept for determining libel and slander cases in any event. We did not want to take away any right that the citizens of the State of Montana presently have in the current Bill of Rights, and our committee takes great pride in the fact that the proposal that you have before you now takes away nothing that the citizens of the State of Montana have, but rather expands their rights in many respects so that expanding government shall continue to be, perhaps will become, more responsible to the citizens of the State of Montana. I hope that explanation does respond to the question. Thank you.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman], if Mr. Dahood would yield to a question?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE DAVIS: Mr. Dahood, subsequent to the Harrington case that—cited in 48 Montana, I believe, or whatever it is, our Supreme Court has held that while under the provisions of this section the jury in libel suits shall determine the law and the facts, the function of the trial court and jury is not greatly different from what it is in other cases. Thus, it is for the court and not the jury to pass upon the admissibility of evidence, upon motions for nonsuit, or for a directed verdict upon motions for a new trial and motions to set aside verdicts and vacate judgments. And so, libel suits, though sui juris, are subject to the rules of practice found wise and useful in administering justice generally in the courts. I know that you've considered this matter, but it seems like this is an archaic carryover that really isn't being followed by the courts anyway, and I wondered if you would resist a motion to strike that portion of it.

DELEGATE DAHOOD: Yes, I do, Carl. I do resist on behalf of the committee, simply because what you have just stated was the premise upon which we approached the section at our first study session; but after reviewing the law, we find that there is general substantial reason as to why the section should remain as it is. The case that you are talking about indicates the traditional function between court and jury does apply in the libel and slander case to the point where the court will instruct the jury as to what the law is in a particular case. The court will continue to determine whether or not there is some basis for granting a motion for a new trial; the court will continue to rule upon objections with respect to the evidence. But in the event the jury in a libel suit should determine that in this particular instance, notwithstanding the facts may fall within the proscription of that particular legal rule, nevertheless the jury does have the right to disregard the law in that instance and find in favor of free speech in that instance. The Montana court would not have the right then, under that rationale, to grant a motion for a new trial. The distinction does exist, and I want to assure you, Carl, that there is reason for leaving the section as we have submitted it to this Convention.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Will the gentleman, Mr. Dahood, yield to another question, please?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE SCHILTZ: Mr. Dahood, I suspect this is in the present Constitution, and if it is it's probably always bothered me. In line 22 it says "prosecutions for libel or slander, the truth thereof". And to me libel and slander are, per se, untruthful—and then when you say "thereof", it bothers me. Could we change that to "of statements" or something like that?

DELEGATE DAHOOD: Delegate Schiltz, you raise a question that, of course, we raised; and I confess to you that there is language in some of these sections that perhaps could be stated in clearer legal language; but we thought in some of these instances we ought to pay some heed to tradition. I think all of us as lawyers appreciate that whether it's stated in a constitutional Bill of Rights or not, truth, unless actuated by malice, is a complete defense. And rather than be concerned about changing some of the words in that section and bring down the critique of certain segments of Montana society, we thought that this might fall within the legal concept of diminutivus; something that perhaps is too trifling to require any type of major change by the committee. So we left it in its original condition. I hope and trust that explanation is satisfactory to avoid a motion to amend at this time. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there other discussion? Very well, the question is on Section 7. Members of the committee, you have before you, on the recommendation of Mrs. Mansfield, when this committee rises and reports after having had under consideration Section 7 of the Bill of Rights Article, that this committee recommend the same be adopted. All in favor, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 8.

CLERK HANSON: "Section 8, Right of participation. The public shall have the right to expect governmental agencies to afford every feasible opportunity for citizen participation in the operation of the government prior to the final decision." Mr. Chairman, Section 8.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman. I move that when this committee does arise and report, after having under consideration Section 8 of Proposal Number 8, that it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: The committee unanimously adopted this section in response to the increased public concern and literature about citizen participation in the decisionmaking processes of government. The provision is in part a constitutional sermon designed to serve notice to agencies of government that the citizens of the state will expect to participate in agency decisions prior to the time the agency makes up its mind. In part, it is also a commitment at the level of fundamental law to seek structures, rules, and procedures that maximize the access of citizens to the decisionmaking institutions of state government. If you recall when we were discussing the Legislative Article, we did not arrive at satisfactory wording to the effect that the Legislature must announce the dates of hearings so many days ahead of time. I think that this provision would very well take care of the fact that the Legislature must provide for some—for citizen participation in its hearings. I believe that other agencies of government—and I think right now of the Forest Service—have also become very much aware of the fact that there are real values in citizen participation where a decision is forthcoming. They announce it to the public and ask for public input, and they have found that this not only provides a good public relations with the public, but also provides them with some of the kinds of information they need, really, in making their decision. It is hoped that this provision will play a role in reversing the dissatisfactions increasingly expressed regarding bureaucratic authority insulated from public scrutiny and participation. The wording of the provision is derived from Delegate Don Foster's Proposal Number 38. Thank you.

CHAIRMAN GRAYBILL: Is there any discussion of Section 8?
Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, would Mr. Dahood yield to a question?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE HABEDANK: Mr. Dahood, as I read this, I am in sympathy with what is being attempted, but I am concerned about the use of your words "every feasible" rather than "reasonable". It would seem to me that "every feasible" would be apt to be construed that no matter what you do, something else could have been done to afford citizen opportunity to participate. And without making a motion, I would like your rationale on why you've used "every feasible" rather than "reasonable".

DELEGATE DAHOOD: Well, in our judgment, "feasible" would include "reasonable" within it. What we were trying to express in this particular section was that the Legislature would do everything possible which is reasonable and feasible to allow the citizen to know that some decision is about to be made; and if the citizen wants to voice any opinion with respect to that decision, that they're going to be given not only a reasonable opportunity but a feasible one—one that provides them with easier access to approach that particular agency so that they can make their particular opinion known. Now you might, for example, give reasonable notice under circumstances where it might be difficult to approach the agency in a meaningful manner, such as perhaps having some undue restriction upon the ability of that particular citizen to make his opinion known to that committee. So by "feasible" we're intending to broaden the scope of "reasonable" to provide that the Legislature shall set up guidelines that will give some real substance to the right of the individual citizen to participate with respect to any decisionmaking function of government. As the comment would indicate, Delegate Habedank, this, I think, in substance is what we would call a constitutional sermon. I think we're laying down a particular principle. We want the Legislature to implement it. I am not prepared to say there isn't a self-executing facet to it as well—that if the Legislature did not do anything about it at all, perhaps if some decision were made without giving notice, without giving a citizen a chance to participate, I think that citizen could contend that there was an unconstitutional legislative activity. But we have faith in the Legislature. We think the Legislature, when it is formed after the new Constitution takes effect, is going to look at this particular section. We think they're going to do something about it.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Will Mr. Dahood yield to one more question?

DELEGATE DAHOOD: Yes, I will.

DELEGATE HABEDANK: As I understand your intent then, it is the thought and intent of the committee that "every feasible" leaves to the Legislature the power by statute to determine what is feasible and does not extend to an individual coming in and convincing a court that whatever the Legislature says, something more could have been done.

DELEGATE DAHOOD: No, Otto, I would think that if the Legislature provided a particular system whereby there will be government participation, I think a court could look at it and say that they have met the criterion of feasible as set forth in the Constitution. It's a reasonable set of guidelines. I don't think we'd have that trouble. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. Chairman. Mr. Dahood, would you yield to a question?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE DAVIS: Mr. Dahood, would you interpret this to mean that any act taken by a School Board, a City Council, a Board of County Commissioners, any other board or commission, that was not noticed—in other words, any item of business they took up they hadn't previously published notice on and advised all the public—would be illegal and unconstitutional under "every feasible", because it would always probably be feasible to do this. Would you please comment on that?

DELEGATE DAHOOD: Yes, I will comment on that, Delegate Davis. I think the intent of this is that any governmental agency, any agency that represents the people of this state, before it makes any substantial decision—and I think again we've got to depend upon the courts to interpret that in a wise and commonsensical way—

must give that citizen some notice so that he can appear and participate. I think that's the function of democratic government, and I don't think it's too great an obligation on government.

DELEGATE DAVIS: Mr. President, I move to amend this article by striking "every feasible" and put in "reasonable" opportunity.

CHAIRMAN GRAYBILL: Very well, that's in line 27. Mr. Davis proposes to strike the words "every feasible" and substitute therefor the word "reasonable", so that the sentence would read: "have the right to expect governmental agencies to afford reasonable opportunity for citizen participation.

Mr. Davis.

DELEGATE DAVIS: I won't speak further on it. I think it's self-evident. In every branch of our government, from school board meetings on, you have decisions and different business items come up that you would have to publish your complete agenda. The County Commissioners—everybody knows when the board meets, but they don't know all the items that may be necessary to discuss. I think it would restrict the operation of the—and function of our government if you have "every feasible"—is really difficult an interpretation.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I do not experience any particular problem in having the word "reasonable" substituted. I'm sure that my committee would not have any particular difficulty. I think, in our judgment, feasible was synonymous with reasonable but somewhat more expansive; but I think, as a lawyer, having been confronted with the use of the word "reasonable" so many times, having seen it defined so many times, that I think the definition that the law would give it would certainly serve the purpose that we intend to serve by Section 8. And if it pleases this body, I wish to state here and now the committee has no objection to that amendment.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Davis' amendment to delete the words "every feasible" and substitute therefor the word "reasonable", on line 27, so that Section 8 reads: "The public shall have the right to expect governmental agencies to afford reasonable opportunity for citizen participation in the operation of government prior to the final decision."

Mrs. Bugbee.

DELEGATE BUGBEE: A roll call vote, please.

CHAIRMAN GRAYBILL: Very well, we'll have a roll call vote. So many as shall be in favor of that motion, say Aye—vote Aye; and so many as shall be opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the ballot.

Aasheim	Aye
Anderson, J.	Aye
Anderson, O.	Aye
Arbanas	Aye
Arness	Absent
Aronow	Aye
Artz	Aye
Ask	Aye
Babcock	Aye
Barnard	Aye
Bates	Aye
Belcher	Excused
Berg	Aye
Berthelson	Aye
Blaylock	Nay
Blend	Nay
Bowman	Aye
Brazier	Aye
Brown	Aye
Bugbee	Nay
Burkhardt	Nay
Cain	Aye
Campbell	Aye
Cate	Absent
Champoux	Absent
Choate	Aye
Conover	Aye
Cross	Aye
Dahood	Aye
Davis	Aye
Delaney	Aye
Driscoll	Aye
Drum	Aye
Eck	Aye
Erdmann	Aye
Eskildsen	Excused
Etchart	Aye
Felt	Nay
Foster	Aye

Furlong	Absent
Garlington	Aye
Gysler	Absent
Habedank	Absent
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Nay
Harlow	Aye
Harper	Nay
Harrington	Aye
Heliker	Nay
Holland	Aye
Jacobsen	Absent
James	Aye
Johnson	Aye
Joyce	Aye
Kamhoot	Aye
Kelleher	Absent
Leuthold	Aye
Loendorf	Aye
Lorello	Aye
Mahoney	Nay
Mansfield	Aye
Martin	Aye
McCarvel	Aye
McDonough	Aye
McKeon	Absent
McNeil	Aye
Melvin	Aye
Monroe	Aye
Murray	Aye
Noble	Aye
Nutting	Excused
Payne	Aye
Pemberton	Aye
Rebal	Aye
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Aye
Romney	Aye
Rygg	Aye
Scanlin	Aye
Schiltz	Aye
Siderius	Nay
Simon	Aye
Skari	Absent
Sparks	Aye
Speer	Aye
Studer	Aye
Sullivan	Aye
Swanberg	Aye
Toole	Aye
Van Buskirk	Aye
Vermillion	Nay
Wagner	Absent
Ward	Aye
Warden	Aye
Wilson	Aye
Woodmansey	Aye
Mr. Chairman	Aye

CLERK HANSON: Mr. Chairman, 75 delegates voting Aye, 11 voting No.

CHAIRMAN GRAYBILL: 75 delegates having voted Aye, 11 voting No, Mr. Davis' amendment prevails. We are still discussing Section 8. Are there any other matters?

Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman, I have said before, I think it is the responsibility of this body to be—to deliberate carefully and not to do things that are going to create a lot of difficulty and confusion in the future. I am concerned about what is meant by the phrase "opportunity for citizen participation in the operation of government". This—I take it, "operation" means the decisionmaking performance of government. And when you participate in it, this, to some people, would mean the opportunity perhaps to vote or to argue, present a position in the course of the formation of that decision; and I want to propose an example, an illustration of how this might work. I've had considerable experience in the past representing individuals who have been subject to condemnation by the State Highway Department, and there is quite an elaborate appraisal ceremony that the State Highway Department conducts. It is always done in the utmost secrecy, and there is quite a lot of skirmishing that goes on between the right-of-way agent and the owner, usually before the lawyer ever gets into it. And my question is whether this language would not enable any land owner whose lands lie in the course of the interstate or some other highway thing to go to the Highway Department and to participate in the appraisal proceedings and the determination as to how his particular parcel was to be bargained for and acquired. And I certainly wouldn't mind this on behalf of clients whom I might represent, because it would greatly advantage his dealings with the department of government involved; but I think you can see that it would create quite a lot of havoc in the conduct of government. And were this to be applied to any other phases of the governmental function, I think we would be in trouble. And I bring this up so that we can look at these words and make sure that whatever we draft here really states what our intention is and if there are limits to what we're authorizing. And this is a mandatory right that a citizen could enforce on his own, because it starts right out—"the public shall have the right"—and it would therefore presumably be enforceable in the court. And I would like to know whether it could be pushed as far as I have indicated.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I think Delegate Garlington is to be commended for bringing up this point, because I think probably to—someone who did not participate in our committee debates might think that that problem can arise from the language that's contained in Section 8. In our judgment, it cannot arise from the language contained in Section 8 simply because it does not support the rationale and the record of this particular debate; this dialogue and this colloquy between Delegate Garlington and Delegate Dahood I think will lay that particular problem to rest forever. What is intended by Section 8 is that any rules and regulations that shall be made and formulated and announced by any governmental agency, which of course are going to affect the citizens of this state and the common welfare, shall not be made until some notice is given so that the citizen will have a reasonable opportunity to participate with respect to his opinion, either for or against that particular administrative action. With respect to the eminent domain situation that Delegate Garlington talks about, that is not within the ambit of Section 8. That involves a particular treatment of an individual right under laws, rules and regulations already made for which, of course, the courts provide the type of protection or the type of due process that we think the citizen needs to protect that particular right. I hope and trust that, for Delegate Garlington, at least, that answer does serve to set aside the particular concern at this time.

CHAIRMAN GRAYBILL: Mrs. Blend.

DELEGATE BLEND: I would like to shed a little different thinking on this subject, Mr. Chairman. I am particularly delighted to see this section presented in the Bill of Rights. I have been involved in a citizens' participation group for several years now, and I am very much aware of the antagonism of government toward citizens' participation in its deliberations. They feel that citizens' involvement is disruptive; that we have elected them to make the laws, therefore we should not interfere. And I believe that this particular section could bring about an involvement of people in the—on the local level, particularly, in a very fine way. Thank you.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman, I am very much in accord with the things that've been said here, but it seems to me that all of this misses the point very badly. The problem is, it seems to me, that here we have a statement which says the public shall have the right, but it is a right to what? A right to expect. Well, I submit that the right to expect something is not a right at all. Therefore, I would move to amend Section 8 by striking the words, on line 25, "the public shall" and on line 26 "have the right to expect" and to further strike—

CHAIRMAN GRAYBILL: Now, just a minute—just a minute. I've got "the public shall". What else are you striking?

DELEGATE HARBAUGH: "The public shall have the right to expect"—to strike those words, capitalize "Governmental agencies", and strike the word "to" and, in place thereof, put the word "shall"; so that the section will read: "Governmental agencies shall afford every reasonable opportunity for citizens' participation in the operation of the government prior to the final decision."

CHAIRMAN GRAYBILL: I trust you mean "Governmental agencies shall afford reasonable opportunity". We struck the word "every" before. You don't need that back in, do you?

DELEGATE HARBAUGH: No—yes.

CHAIRMAN GRAYBILL: All right, Mr. Harbaugh's amendment would strike, from lines 25 and 26, the phrase "the public shall have the right to expect"—strike that phrase and then start with a capital "G"—"Governmental agencies"—and then insert the word "shall"—"afford reasonable opportunity for citizen participation in the operation of government prior to final decision."

Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman, it seems to me that this really is the intent of what the committee has envisioned here. And the way that proposal is phrased at present, it really does not do that—that all that the public is given is the right to expect something. I would submit that making the amendment that I have proposed would clarify this right that the public is to have under this section.

CHAIRMAN GRAYBILL: Is there further discussion?

Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, fellow delegates. As one of the authors of this particular section, I would not be opposed to Delegate Harbaugh's amendment, although, personally, I don't think that it really changes either the intent or the effect of this section. But if this body would like to amend it in this manner, it certainly would not be in opposition to my original thoughts.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, Delegate Foster conferred with me just a moment ago and asked my opinion. I told him that's certainly stating the intent that we had in mind, and with that premise, I certainly would not quarrel with the delegate with respect to his proposed amendment. But I can submit one reason as to why there should not be an amendment, and that is from the standpoint of legislative implementation. We intend to provide by Section 8 not only a right, but a constitutional direction to the Legislature to implement that right by setting forth the guidelines and setting forth the requirements of governmental agencies in this regard. If we accept the amendment, the language would tend to indicate that we have self-executing right that does not require any particular guideline from the Legislature. I would then have a concern, and that concern would be this: who, then, would determine whether or not the agency in question is providing the type of opportunity or the type of regulation for citizen participation that would satisfy the constitutional directive? I think the language of the committee, as it is before you now without amendment, is going to require that there be uniform rules and regulations set by the Legislature with respect to citizen participation, and I submit that Delegate Harbaugh's concern that the word "expect" is not strong enough is not a matter that should cause us any apprehension. It is a matter of constitutional draftsmanship that in certain areas of basic and fundamental rights you make no attempt to be precise; you merely make an attempt to set the principle down in general language so that the Legislature or the implementing lawmaking body will have the opportunity and will have the latitude to set forth the guidelines that will best implement that particular policy and have the opportunity to change those guidelines with the passing years as circumstances change and different needs arise. So, notwithstanding the fact that Delegate Foster and I are satisfied that the language as amended may tend to secure for the citizens the same objective, we will submit, at this time, that the motion to amend should be resisted simply because it is too restrictive with respect to the type of uniform guideline that we would want the Legislature in its wisdom to enact. And therefore I oppose the motion to amend.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Will Delegate Dahood yield to a question?

DELEGATE DAHOOD: Mr. Chairman, I yield.

DELEGATE JOYCE: Is there any—in your studies, did you find any other state constitution that had a similar provision?

DELEGATE DAHOOD: There were similar state constitutions that took up this particular issue, Mr. Joyce. I do not recall that there was any state constitution that had precisely this particular language. I do recall several that did provide that there should be citizen participation with respect to governmental matters; and I submit to you, Mr. Joyce, in answering your question, that I don't think any governmental agency should have any concern or any apprehension about having a citizen participate before any rule or regulation is laid down that's going to affect the life of that particular citizen. I should think that any governmental agency within a democracy would welcome the opinion of the citizen before some guideline is set down with respect to his conduct and his life as a citizen.

DELEGATE JOYCE: Well let me ask you another quesion, Mr. Dahood. Would—

DELEGATE DAHOOD: I yield once again, Mr. Chairman.

DELEGATE JOYCE: Would you interpret—

CHAIRMAN GRAYBILL: All right. Try this time to—just to answer now, Mr. Dahood. (Laughter)

DELEGATE JOYCE: Would you interpret this section as giving, say, me the right to participate in the Supreme Court conferences when they're deciding cases that I've argued?

DELEGATE DAHOOD: No, I do not and it wouldn't do any good anyway. (Laughter)

DELEGATE JOYCE: Well, I know the—but I—May I speak then, Mr. Chairman? I move—

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: I move, as a substitute motion, I suppose—there has to be a villain in the piece and I'm willing to be the villain—I move to strike Section 8 in its entirety. May I speak on that motion?

CHAIRMAN GRAYBILL: Mr. Joyce's motion is to strike Section 8 in its entirety. Okay, Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, members of the committee. It seems to me that however laudatory the language may be, that when we're writing a Bill of Rights we ought to give people rights or not rights. But to say that they have the right to expect something gives them no right at all, as Delegate Harbaugh pointed out; and it seems to me, with the amendment that the government will afford every reasonable opportunity to participate in the operation of government just makes the whole proposition unworkable. It seems to me that it turns our system of government from a republic into a true democracy. If everybody's got the right to participate in every decision that's made in government, why, then it will disrupt the government in that, under our system of government we elect people to make decisions. We may not agree with them, and we may think they're crazy, and we may want to vote against those people when they come up for election again because they've made decisions that we don't like. But it seems to me that this is completely unworkable to allow the individual citizen to participate in the decisionmaking; that actually the decisionmaking must necessarily rest with the people who are, in fact, elected. And as far as—it just seems to me to write into the Constitution the right to participate in the decision will just create more harm than good and that it really doesn't give anybody a right. And if, as Delegate Dahood says, the right is subject to reasonable legislation—it doesn't say that the Legislature can set up any rights on it—it gives an absolute right to participate. And, on the whole, I think that it will do more harm than good, and I think that we ought to strike the whole section.

CHAIRMAN GRAYBILL: Is there further discussion?

Mr. Foster.

DELEGATE FOSTER: Mr. Chairman and fellow delegates, I wish to speak in opposition to the motion of Delegate Joyce. I think this is a very important question, and I think that we should be very well aware of what this committee is attempting to do. The continuing growth of bureaus has brought a new dimension to our representative form of government. We have drawn clearer lines of election for legislative officials. We have devised a more responsive system of selection and election for judicial officials. We have retained an extensive elective process for our executive officials. But what of the bureaus, the long arm of government with which the average citizen most often comes in contact; the long arm of government which is not responsive to elective officials; the long arms of government with which many, if not most, of our Montana citizens have met frustrating resistance and/or indifference? Elections do not materially affect the bureaus. Political pressures are not sufficient to juvenate [sic] response to public need. Public awareness and access seem to be the only tools to remind the great mass of public servants that their job is to serve the needs of the public and no other; they are paid by tax dollars to benefit the public above all else. It is my opinion that many Montanans' dissatisfaction with government stem from lack of awareness of the primary role of public servants to serve the public; be they rich or poor, strong or weak, helpful or helpless. It is my opinion that many Montanans want to be a part of their government. They want to know their government and what it is doing. They want to provide input on matters which affect them directly or which they are keenly interested in. Not all Montanans are interested in all phases of government. Most Montanans are, I submit, interested in knowing about and participating in relatively limited scope of government; but when that time comes that Montanans wish to be known and be heard, they expect their government to listen and preferably act. If they are received reasonably and heard and the results explained, they will feel that they have done their part in a democratic government. If they are ignored or passed off indefinitely, they become frustrated and demoralized in their government. It is hard to imagine how the inclusion in our Constitution of a right to know and a right to participate could do anything but improve in some measure responsiveness of government officials to citizens and improve in some measure citizens' confidence and satisfaction in government. The government will be the better for it; the people will be the better because of it. I resist the motion to delete, and I support the proposal of the Bill of Rights Committee. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman, I rise also to resist the motion to delete and also to clarify one point that Mr Joyce made. We are not suggesting that the citizens participate in the decision—the decision is made by those who have been elected to make that decision or those who have been appointed to make the decision—but to participate in the deliberations prior to the decisionmaking. I have been a part of this process for a good many years now, and I have found that while at first governmental agencies—and I've participated both on the state and local level—may be threatened by having people around who are seemingly interfering in what they are doing, that after they become accustomed to the fact that there are citizens who are interested and who want to contribute, that they really welcome this kind of participation. I don't think—and I think it's unfortunate, but I don't really feel that citizens are going to rush in great droves to participate—we just haven't found that—but I think that if they know when decisions are being made, what topics are being considered, that they will benefit from learning in advance what their people think. I think this is true with individuals, as well as groups. I think that farm groups, Chamber of Commerce groups, labor groups, as well as groups of interested citizens, can really make a valuable contribution to our government; and this is a contribution that is really free. And, I think, will add, you know, at no additional expenses a considerable dimension to the kind of decisions that are being made. Thank you.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Thank you, Mr. Chairman. Mr. Chairman, I rise in opposition to Mr. Joyce's motion to delete. I think in this time, in this age, government is slowly slipping away from the people. I think the people are beginning to lack credibility in their government; and if a provision such as this can bring the government closer to the people, if a provision such as this can give the people more access to the government, then, Mr. Chairman, I think that it is most vital that we accept this provision. And for that reason I resist the motion by Mr. Joyce.

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: I certainly agree that we are dealing here with ideals; and it would be a great thing if we could operate on the basis of idealism in the participation in government. It has often been said here that the courts are the ones who seem to louse all of this up and to find fault with things. But I want you all to remember that nothing comes to court except when it is brought there by an aggrieved citizen. And you must also remember that, in most of the operations of the government, there is a citizen who is aggrieved as well as the one who is comforted by the action of government. Take the simple business of zoning as it may occur in individual communities. Zoning limits some owner's right to use his property, and he is the one who is aggrieved; someone else is happy that this good result came about by the operation of government. And I want you all to realize that when you have a very brief statement like this, unaccompanied by the hours of discussion and the debate and the consideration that we are having here, you just look at the little old words. And here now is some man, some property owner, who is individually aggrieved by an action of the zoning board and he goes to his counsel and he says, "What can I do to hold this up?" And this is how and where the case begins to get in court. And he goes to his counsel and he says, "Now, it says here that I had a reasonable opportunity to participate in the operation of government before they take their zoning action, whatever it may be, and I don't think I did." Now, there is no guideline here. There isn't anything that says what reasonable participation amounts to, and there isn't anything to keep that man from starting his case, holding up the operation of the zoning regulation, whatever it may be, while there is litigation as to what transpired and whether he did or did not, in fact, have a reasonable opportunity to participate. And this may take 1 year or 2 years; and of course all he may think is that if he can get it delayed long enough, he can somehow stall or stymie this zoning action, whatever it may be. And I ask you all to look at this seriously now and realize how many different kinds of government affect the right of one individual against another where the aggrieved one is going to come in and say, "I didn't have the opportunity to participate so this action that was taken does not live up to the Constitution, and I am therefore entitled to object." Now, one thing you have to remember always is that constitutional power is far greater than any other power; and sometimes I kind of fear that we are getting a little intoxicated with the constitutional power that we feel here, and this is why I am always counseling caution in these things, because these are irretrievable and unmanageable. They are rigid and firm. And if you were the judge sitting there and you saw that it said in the Constitution that the citizen had the right to participate in the operation of government, what would you do about it if some fellow came in and said, "Gee, they did this and I didn't have a chance to know. They didn't write me a letter. They didn't explain the things that they were doing. They didn't tell me what they heard from these other people. I didn't know about that"—so on and so on. Now, you multiply this and all the myriad contacts between government and the individual, and you see what this is going to do. And I caution you again that we should make sure that the language we write and we put in here is so clear that these things are not suddenly thrust upon the public in a way that creates disruption and dissatisfaction with government instead of pleasure with it.

CHAIRMAN GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman, I rise in support of Mr. Joyce's motion. I believe that the Legislature is a deliberative body, and I don't believe that every citizen can rightfully participate in those deliberations. I feel that they participate by electing the representatives to do the deliberating. Thank you.

CHAIRMAN GRAYBILL: Mr. Vermillion.

DELEGATE VERMILLION: Mr. President [Chairman], I came here with one idea in mind, a kind of a philosophy, and that is that the public and the people are actually the boss of the government and the government is the servant of the people. You take that in mind and take this Section 8 and replace the words "the public" and make that "the boss" and make "the government" "the employees", you could come up with a phrase like this: "The boss shall have the right to expect his employees to afford him reasonable opportunity to participate in the operation of his business." And that seems to be fairly basic, and it seems to me that we should keep Section 8 as it is, and I oppose Mr. Joyce.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: I would like to speak in opposition to the amendment; and in reaction to my fellow committeeman, Mr. Garlington, the fear that there's going to be a case—here's the zoning business and that the man will start a case if he didn't have a chance to participate—it seems to me I would like to see him have a chance to give a case if he didn't have a chance to participate. So fundamental is it that I would be more afraid of that right being infringed upon than the delay of the action.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman, I think I saw this proposal in its original form as submitted by Mr. Foster and others. At that time I didn't know what it means, and I'm not sure I do now. I was willing to go along with it when I heard Mr. Dahood's explanation that this is a matter that the public—there would be reasonable opportunity for the public to find out what is going on and they will have a reasonable opportunity to express their views to the body that is in—deliberating or taking the action. This seems reasonable to me. But I do think the language here is—like Mr. Garlington says, is pretty strong. We're talking about participation. Now, what notice is going to be required? What right does this give rise to? Does each body have to, at each step of the proceedings, notify all of the public and make sure that all of the public somehow gets the message, and then they have a right to participate? And what is participation? We are 100 delegates here. I can't think of anybody that has ever been more open, yet are we letting the public participate? Are we letting the people in the gallery give—come down and talk on this matter, express their views in the open hearing? We've let them—we've given them notice of committee hearings. They could come in. They certainly have sent us numerous letters expressing their views. Now, this is participation; but must it go further? Must they have a voice on the floor and participate? Must they have a vote in the proceedings? All of this is—language is so loose that it can lead, as Mr. Garlington has pointed out, it can lead to nothing but lawsuits. Earlier here, someone designated the constitutionality of—as to whether or not all of the—in the title of a legislative act, that all of the matters covered therein should be expressed in the legislative act or it becomes unconstitutional. And they spoke, "Well, that's become nothing but a lawyers' feed bill," and I suppose it has, to some extent; but if that's a lawyers' feed bill, I'll guarantee you this one will be, because we won't even have to look up any constitution. Any time a client comes in and they say, "There's a statute against me" or "There's a law against me", we won't even have to turn to the Constitution. We'll just say, "Put somebody on there; find out somewhere in the legislative process where the public didn't have a right to proceed, or to participate." Maybe it's some legislative step. The hearing was had and there's no proof that the public was there or there was room for the public to participate. All of this can open a Pandora's box, and all of it can lead to good solid legislation where the public had adequate notice and they had adequate right to notify their representatives of their feelings on the matter—could still be defeated because of the interpretation put on here by the courts and by—and the courts are nothing but individual judges—in their desire to set aside a law will rule that somehow or another the public couldn't participate. I suggest that if the intentment is as Mr. Dahood says, then I can support it. But I feel very much like Mr. Joyce and Mr. Garlington. It can be pushed far beyond what the Committee on the Bill of Rights wants here, and when it does, then we are creating a monster. And I submit that Mr. Joyce's motion should be accepted.

CHAIRMAN GRAYBILL: Very well. The Chair would like to get a vote on at least Mr. Joyce's motion here before we go to dinner, so the Chair will entertain further debate. Please be brief.

DELEGATE BLAYLOCK: I'm always brief, Mr. President [Chairman].

CHAIRMAN GRAYBILL: That's why I'm calling on you, Mr. Blaylock. (Laughter)

DELEGATE BLAYLOCK: Mr. President [Chairman], I believe it was Mr. Davis who put in the word "reasonable" in here. And when he did that, I thought I saw a vast look of relief spread across all of our barristers' faces, and so if we—he said it was defined; they know what that word means. It says "reasonable opportunity for citizen participation"; and if we go back to Section 1, which this body has adopted, it says: "All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole." So I submit, Mr. President, that a citizen should have a right to participate in that government.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman. I would like to say that I like the theory of this, but in working with a group of people that has a majority of lay people—this is the comprehensive health planning—I can see all kinds of citizens' participation. But in looking at this, I'm wondering if we aren't looking a little deeper into a policy-making. And even in our organization, I wonder if there was a decision on food stamps within a county or changing the way it was handled, how far can we go? And the words here would make me think this was a lawyer's dream, and therefore I would speak in opposition to this.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: I'll be brief, too. There are a couple of things that I'd like to point out that I don't think have been said yet. I'd like to speak basically in opposition to the motion to delete, because I think we need this sort of section; and the amendment which I offered does not take this out of the realm of political theory. It still is in the realm of political theory. Also it seems to me, secondly, that the title of this article is very misleading if we adopt the article as it is presently written. What is really offered to us under this title of a right of participation is a right to expect something, not a right to participate, and I think we want a right to participate. Perhaps this is a Pandora's box. But if it's a Pandora's box, maybe we'd better open it and see what's in it. So I would resist the motion to delete.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Mr. President [Chairman], I come up here as a juryman and I've made up my decision. I think that if this thing is a very strong article and can be interpreted as Mr. Garlington and Holland said, that it could be very dangerous. And as other delegates have said that it's—doesn't mean anything the way it's written; either way it's a bad deal. I would like to go for Mr. Joyce's amendment.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, if this particular section could be interpreted as Mr. Garlington has suggested, as Mr. Holland has suggested, if it doesn't mean anything, as another delegate has suggested, then it ought to go out. But that isn't true. The article states—the section states very clearly that we are talking about governmental agencies, and the rationale on page 21 says as follows: It is hoped that this provision will play a role in reversing the dissatisfactions increasingly expressed regarding bureaucratic authority insulated from public scrutiny and participation. The intent of this particular section is to make sure that these governmental agencies, these bureaus, are going to be more responsible to the individual citizen. We are talking particularly about the rule and the regulation that they make to implement the law that is given to them by the Legislature, which directly affects each and every one of us. And we think that when those rules and those regulations are made that are going to affect our everyday lives, that we should have the right to participate. Before the Constitutional Convention accepts a proposal, there's a public hearing. Before the Legislature passes a law, there is a public hearing. And before a governmental agency passes a rule or regulation that has the force and effect of law, there ought to be a public hearing. Now, that's what we're talking about. The language is too broad? How about freedom of speech, and how about freedom of religion? Can anything be broader than that? And yet there has to be restrictions on those particular rights, and the books of law are filled with the restrictions that are necessary to make sure that those rights are realistic rights within a free society. We submit to you that with the debates that have taken place on this floor here and now and with the journal and with the record that is made, there could be no mistake as to what is intended by Section 8. And the Legislature will carry it out, and the Legislature will set guidelines; and when governmental agencies—and I underscore that—are going to set forth rules and regulations, make rules and regulations that govern all of us, unlike what they've done in the past with callousness and indifference to the American and Montana citizen, they're going to have to give notice that they are going to do this. And they are going to have to listen to the citizen before they pass that type of rule and regulation that unquestionably has the force and effect of law. I oppose the motion to delete.

DELEGATE JOYCE: May I close?

CHAIRMAN GRAYBILL: Apparently you're not going to be able to close. I see Mr. Wilson up. (Laughter)

DELEGATE WILSON: Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: I rise with a great deal of apprehension. I have a lot of respect for the different lawyers that have approached this subject, and I see that they cannot agree. There's a lot of different opinions; and I propose to the rest of us people who are just nonlawyers, citizens, that perhaps we're opening up a field for a wide range of litigation. If they can't decide among themselves now, we're in trouble.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Yes. Mr. President [Chairman], I would just like to add that if we have to base our decisions on only those things that the lawyers can agree on, we'll never adopt any of this Constitution. (Laughter)

CHAIRMAN GRAYBILL: Mr. Joyce, you may close.

DELEGATE JOYCE: Mr. Chairman, I suppose that in closing, it's a matter of philosophy as to what should be in a constitution. I happen to believe that constitutions shouldn't contain any sermons. I happen to believe that if you're going to give people rights, they ought to have rights that are enforceable in the courts. I don't read this section that it only pertains to the rulemaking power. I submit that we already have an Administrative Procedure Act that by statute that if there is—it is desirable for the government—for the people to participate in government, that the Legislature ought to set down rules and guidelines, that the Legislature does have that constitutional power now. It seems to me writing anything into a constitution that abrogates or makes unfeasible the reasonable exercise of that power will do more harm than good. I submit that just writing platitudes into the Constitution will do more harm than good. And, in reply to my distinguished delegate, Mrs. Robinson, if us lawyers can't agree, it seems it is an anomaly here that us lawyers are trying to keep away from having a field day with the section, while the rest of you people are trying to force it upon us. And that does seem anomalous to me; and it seems, I might submit to you, that perhaps because we do practice law and we are involved in courts and we are trying to enforce rights in courts, that maybe we do know something about what constitutions are all about. And, of course, those of you who think we do not, even though we come from every different kind of political persuasion, why, that's just a deficiency, I guess, in the public relations of the legal profession. But notwithstanding, I still reiterate that this section as written will do more harm than good, and I hope that my motion to delete passes.

CHAIRMAN GRAYBILL: Very well, I trust you want a roll call vote. No?

DELEGATES: Yes.

CHAIRMAN GRAYBILL: Yes? All right. So many as shall be in favor of Mr. Joyce's motion, which is to strike Section 8 in its entirety, vote Aye; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: The vote is closed. Please take the vote.

Aasheim	Nay
Anderson, J.	Aye
Anderson, O.	Absent
Arbanas	Nay
Arness	Absent
Aronow	Nay
Artz	Nay
Ask	Aye
Babcock	Aye
Barnard	Aye
Bates	Aye
Belcher	Excused
Berg	Aye
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Aye
Brazier	Aye
Brown	Aye
Bugbee	Nay
Burkhardt	Nay
Cain	Nay
Campbell	Nay
Cate	Nay
Champoux	Nay
Choate	Aye
Conover	Nay
Cross	Nay
Dahood	Nay
Davis	Aye
Delaney	Aye
Driscoll	Aye
Drum	Absent
Eck	Nay
Erdmann	Nay
Eskildsen	Excused
Etchart	Nay
Felt	Absent
Foster	Nay
Furlong	Nay
Garlington	Aye
Gysler	Aye
Habedank	Absent
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Nay
Harlow	Nay
Harper	Nay
Harrington	Nay
Heliker	Nay
Holland	Aye
Jacobsen	Aye
James	Nay
Johnson	Aye
Joyce	Aye
Kamhoot	Aye
Kelleher	Nay
Leuthold	Nay
Loendorf	Nay
Lorello	Nay
Mahoney	Aye
Mansfield	Nay
Martin	Aye
McCarvel	Nay
McDonough	Nay
McKeon	Nay
McNeil	Nay
Melvin	Aye
Monroe	Nay
Murray	Nay
Noble	Aye
Nutting	Excused
Payne	Nay
Pemberton	Aye
Rebal	Aye
Reichert	Nay
Robinson	Nay
Roeder	Aye
Rollins	Aye
Romney	Nay

Rygg	Aye
Scanlin	Nay
Schiltz	Nay
Siderius	Nay
Simon	Aye
Skari	Nay
Sparks	Nay
Speer	Nay
Studer	Aye
Sullivan	Nay
Swanberg	Aye
Toole	Aye
Van Buskirk	Nay
Vermillion	Nay
Wagner	Absent
Ward	Aye
Warden	Aye
Wilson	Aye
Woodmansey	Nay
Mr. Chairman	Aye

CLERK HANSON: Mr. Chairman, 37 delegates voting Aye, 54 voting No.

CHAIRMAN GRAYBILL: 54 delegates having voted No and 37 Aye, Mr. Joyce's motion fails.

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move the committee recess until the hour of 8:00 p.m. this day.

CHAIRMAN GRAYBILL: The motion is to recess until 8:00 p.m. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered.

(Committee recessed at 5:50 p.m.—reconvened at 8:02 p.m.)

CHAIRMAN GRAYBILL: Mr. Vermillion, would you shut the doors for us. Members of the committee, before recess we were discussing Section 8, on page 5 of the Bill of Rights Article, and this article was first amended by Mr. Davis by striking the words "every feasible" and putting in the word "reasonable". I see no reason to go behind that. Next it was amended by Mr.—an amendment was proposed by Mr. Harbaugh, striking the first phrase—"The public shall have the right to expect"—and making the phrase read: "Governmental agencies shall afford reasonable opportunities for citizen participation." Then Mr. Joyce made his motion to strike, which was defeated. Unless I hear objection from the floor, I will consider Mr. Harbaugh's amendment as still entertained; namely, that the phrase would read: "Governmental agencies shall afford reasonable opportunity for citizen participation in the operation of the government prior to the final decision." And the matter would be open for further amendments. Is there any objection from the floor to starting at that point? Very well, we'll start at that point. Mr. Harbaugh, with your amendment under discussion. Do you care to rephrase it, or at least to rediscuss it?

DELEGATE HARBAUGH: No, I was going to close if—

CHAIRMAN GRAYBILL: Well, let's not close too quickly. There have been a lot of pencils out over the dinner hour.

Mr. Berg.

DELEGATE BERG: Would Mr. Dahood yield to a question?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE BERG: And would you yield to a series of three or four questions?

DELEGATE DAHOOD: I will yield to a series of three or four questions, Mr. Berg.

DELEGATE BERG: Well, Mr. Dahood, I note that the article as now proposed—or the section says "for citizen participation in the operation of government prior to final decision." Do you mean, by "government", to include all branches of government?

DELEGATE DAHOOD: I do not. I mean, by "government", include those branches that are going to make rules and regulations that have the force and effect of law with respect to the average citizen. That does not include the Judiciary, Mr. Berg, obviously.

DELEGATE BERG: This is your construction.

DELEGATE DAHOOD: That is my construction.

DELEGATE BERG: Is there any such construction in your comment?

DELEGATE DAHOOD: In the comment—there is no such construction in the comment; but it would seem to me, in my judgment, that that is the only construction that can be given that is reasonable.

DELEGATE BERG: Thank you, Mr. Dahood. I'm sorry that I have to disagree with my colleague, Mr. Dahood.

DELEGATE DAHOOD: You have three questions to go. (Laughter)

DELEGATE BERG: Well, I'm through. I'm through with my questions. I have your answers. I don't think that it's rational or reasonable to describe government and not include all branches of government. I don't see how you can arrive at the interpretation of the word "government" and exclude from it one branch and include others. If it does include Judiciary—as Mr. Dahood assures us it does not—but if it does, you run into a very peculiar problem. For example, if in the course of a trial with a jury, you have litigants there and you have people in the public courtroom, sitting back as observers. These are people, now, who under the terms of this—at least in my construction—would have a right of some kind to participate in the operation of that branch of government before a final decision is reached. I cannot conceive of what their participation would be. I don't know whether it might include suggesting instructions to the court that the jury should be given in the deliberation of this case, or without a jury, whether the participation might include the giving of the findings of fact and proposed conclusions of law. I don't understand what this word "participation in the operation of government" means, especially as it could relate to the Judiciary.

DELEGATE DAHOOD: May I respond now, Mr. Berg?

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: First of all, with respect to Mr. Berg's comment, which I know is a comment that we should have before us. As I indicated earlier, I think this dialogue is very meaningful and the questions, I think, are meritorious. I once again want to urge all of the delegates to look at the term "governmental agencies", which is the key to constructing that particular section. Governmental agencies, I do not think can be defined to include the court. Participation—citizen participation in the operation of government; I think the comment would tend to indicate that what we have in mind is that before decisions are made that affect the citizens of Montana, the general welfare of the citizens, that the citizen will have a right to express his opinion and in that way participate in the operation of government that leads to that final decision point. And I do think that we should all recognize that when we're dealing with constitutional doctrine, which must necessarily be phrased in broad language, that we are going to have to deal with a generality and then to bring it down to a specific point. We have to have some regard for the reference within which that generality is framed, and we would expect, of course, that the Legislature would outline for us the guideline for participation in order that we might achieve the objective sought. Once again, I want to point out, we have in mind the governmental agencies that are miniature legislatures who put together rules and regulations that affect us all. And of course I could give you many examples of what I'm talking about, and I'm sure the lawyers are well aware of it and I submit once again that Section 8 advances the rights of the citizen in the State of Montana and is necessary. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman, I'm very much in accord with the whole intent here of this section; and as I look at it more closely, it seems to me that it is clear that what the section speaks about is the right of participation in regard to governmental agencies, as I have amended it. But I am afraid that if we say the public shall have the right to expect, included with the rest of the language, that really we're not getting at the heart of the problem. It seems to me that if we really want to have a right to participate, that then we ought to spell that out; that this is the right that we're specifying, not a right to expect to participate. It seems to me this removes the whole thing one step further from those people whom we would like to see become involved in these things; and I have no quarrel with the expressed intent as it's spelled out in the commentary on this section. It says in part it is also a commitment at the level of fundamental law to seek structures, rules and procedures that maximize the access of citizens to the decisionmaking institutions of state government; and I am in full accord with that. But I just would hope that we get down to the place where we actually set forth the right to participate, not set forth the right to expect to participate.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, I have a substitute motion that I would like to present; and perhaps the Chair would read the substitute motion.

CHAIRMAN GRAYBILL: It's short. I'll read it. Mr. Aronow's substitute motion is, substitute the following language in place of the present Section 8: "Reasonable opportunity shall be afforded to the public to appear and testify before all governmental agencies exercising the power to adopt rules and regulations having the force of law, which opportunity shall be exercised under circumstances prescribed by law." Now, I'll read that more slowly in case you want to write it down. "Reasonable opportunity shall be afforded to the public to appear and testify before all governmental agencies exercising the power to adopt rules and regulations having the force of law—comma—which opportunity shall be exercised under circumstances prescribed by law."

Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, I have listened to this debate, and I think a matter of this sort has a proper place in the Constitution. And I am greatly impressed with the comments: "It is hoped that this provision will play a role in reversing the dissatisfactions increasingly expressed regarding bureaucratic authority insulated from public scrutiny and participation." We have in the Constitution the provisions that the Legislature shall act openly when—with public information. We have provisions that no one shall be denied access to the courts. Now we have the problem of the appointive bureaucratic organizations of state government. As you all realize, and I have realized for many years that the appointee does not owe his allegiance to the public. He owes it to the appointive authority; and this is the problem that we're trying to get to, I believe. I realize that the committee has spent a great deal of time and heard a great deal of testimony. We have had a considerable debate, and I do believe that this provision will have the good effect that we want upon the processes of government which are not elective; that is, upon the appointive personnel that makes the rules and regulations that affect the lives of all of us. And it will make these appointive people, hopefully, a little more responsive to the needs of the public rather than their appointive authority. I trust that this proposed amendment will be favored by this Convention.

CHAIRMAN GRAYBILL: Mr. Burkhardt.

DELEGATE BURKHARDT: Mr. Chairman. I rise in opposition, not to the thought which Mr. Aronow has put into his statement, but to the form in which it's expressed. It seems to me that the Bill of Rights is really a poetic statement and is not to be confused with the terse and hard language of the statute. Robert Frost has said, and I think perhaps has said it for generations, that a poem is a momentary stay against confusion; and I have an idea that Frost may be quoted as we now quote Shakespeare sometimes. He may be quoted three or four hundred years hence. He has succeeded on numerous occasions in stating in simple ways the hopes and dreams of people and their experience, and it will stand. I think those who write a Bill of Rights have something of the same goal in mind. They don't want a precise, hidebound kind of inescapable statement that has to be put into the statutes. What they're looking for is the soul of a document, the living, growing reality. And I think this group has demonstrated soul, not only in this section but in some of the sections just ahead of us—the right to know, the right to privacy, which I hope we'll get to eventually. But it seems to me that what we're dealing with here is an expression of poetry which, nevertheless, is a kind of a safety net under the high wire in the circus. And while it may not serve every situation, there may be an occasion of blatant abuse when the safety net is needed and it will be there and it will serve a very important function. Therefore, I'd like to get to the language of the original committee, for, while it is somewhat imprecise, it's the kind of poetry that a court that's concerned for justice can work with and the future can find hope in. Thank you.

CHAIRMAN GRAYBILL: Is there other discussion of Mr. Aronow's proposed language? (No response) Very well, the issue is on Mr. Aronow's substitute motion to amend Section 8 by deleting it and putting in the language: "Reasonable opportunity shall be afforded to the public to appear and testify before all governmental agencies exercising the power to adopt rules and regulations having the force of law, which opportunity shall be exercised under circumstances prescribed by law." All in favor of that substitute motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

UNIDENTIFIED DELEGATES: Division.

CHAIRMAN GRAYBILL: All in favor, use the voting machines to vote Aye; and all opposed, No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, 52 having voted No and 37 having voted Aye, Mr. Aronow's motion fails. Very well, we're debating Mr. Harbaugh's language: "Governmental agencies shall afford reasonable opportunity for citizen participation in the operation of the government prior to the final decision". Is there further discussion?

Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, I move to amend the amendment to—on line 28, page 5, to substitute the word "agency" for the word "government".

CHAIRMAN GRAYBILL: Now would you state your line again? Are you on page 5?

DELEGATE McNEIL: Page 5, line 28. Delete the word "government" and insert the word "agency".

CHAIRMAN GRAYBILL: Very well, Mr. McNeil wants to substitute the word "agency".

DELEGATE McNEIL: Mr. Chairman.

CHAIRMAN GRAYBILL: Just a minute. It's the second time the word is—the last line of subsection 8, so that it reads: "in the operation of the agency prior to the final decision".

DELEGATE McNEIL: Yes.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, I believe this will clear up the ambiguity that was concerning Delegate Berg. I think it will reach to the heart of what the committee was really looking for, and that is making these bureaucratic agencies responsive to the people. It will eliminate any question that the people are not going to participate by way of vote in terms of the Legislature or the Supreme Court or anything else and will clearly pinpoint the fact that it is the governmental agencies that are the target of this section designed to permit the citizens to participate therein.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman, I heartily concur.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: So do I. Mr. Chairman, I thought—I might prevent—prefer just for clarity, and I don't know why it sounds better to me, but to have "governmental agencies" rather than "agency". Would that—I don't know if it makes any difference.

CHAIRMAN GRAYBILL: We already have that on the first line.

DELEGATE ECK: Yes. I guess maybe the "agencies" would be satisfactory, and I think that this is really the intent of the statement. And I think that by eliminating "government", it eliminates things like the Judicial, which we certainly didn't intend to refer to.

CHAIRMAN GRAYBILL: Mr. McNeil, a question has arisen. "Governmental agencies" —plural—"shall afford reasonable opportunity for citizen participation in the operation of the agency or the agencies", I-E-S? I know Style can do that, but—

DELEGATE McNEIL: If that isn't within the province of agencies—or within the province of Style and Drafting—if the first part of the sentence is to be "governmental agencies", then it should read "participation in the operation of agencies prior to the final decision".

CHAIRMAN GRAYBILL: All right, it can be the—we'll make it plural in both cases. All right, is there further discussion?

Mr. Heliker.

DELEGATE HELIKER: Would Mr. McNeil yield?

CHAIRMAN GRAYBILL: Mr. McNeil, will you yield?

DELEGATE McNEIL: I yield.

DELEGATE HELIKER: Just as a matter of curiosity, Mr. McNeil, what is a government agency? (Laughter)

DELEGATE McNEIL: I don't have a precise answer to that. I think it is what the committee intended to reach with this, and that is appointive commissions, bureaus, so forth, to the exclusion of the Judiciary and the Legislature. But I don't have a precise answer to that question.

DELEGATE HELIKER: Will Mr. Dahood yield?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE HELIKER: Does it exclude legislative agencies of local government?

DELEGATE DAHOOD: Legislative agencies of local government?

DELEGATE HELIKER: City councils and so forth?

DELEGATE DAHOOD: No, I would not think that it does that; but I think what we're trying to get at is the type of bureau within the governmental structure. If we have agreed in that fashion, we're going to be talking about whatever would constitute a governmental agency. I suppose it would apply to some of the agencies that may be local. I think a lot would depend on how they're constructed and by whom they're appointed.

DELEGATE HELIKER: Do they have to be appointed?

DELEGATE DAHOOD: Do they have to be?

DELEGATE HELIKER: Yes.

CHAIRMAN GRAYBILL: His question, Mr. Dahood, was, is the city council a governmental agency?

DELEGATE DAHOOD: The city council, in my judgment, would not be the type of governmental agency that's contemplated by Section 8.

DELEGATE HELIKER: May I ask—inquire further? Then you—this applies only to appointive agencies?

DELEGATE DAHOOD: Basically, that's true, because a city council, for example, just like a Legislature, is not going to act without regard to the—to citizen participation. They are not going to do it; but the governmental agencies that are not elected, that are appointed, that function to carry out the laws that are passed, are the ones, of course, that will enact rules and regulations and make the decisions that affect people with the effect of law without, sometimes, having any regard for citizen participation.

DELEGATE HELIKER: Thank you.

CHAIRMAN GRAYBILL: Very well, the question arises on Mr. McNeil's amendment, in line 28 of Section 8, to change the word "government" to the word "agencies", so that the phrase reads: "to afford reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision." So many as shall be in favor of Mr. McNeil's amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: His amendment is adopted. Now we're back on Mr. Harbaugh's basic amendment to make it: "Governmental agencies shall afford reasonable opportunity" and to strike the first few words. So many as shall favor Mr. Harbaugh's motion that we strike the first phrase and start the sentence with: "Governmental agencies shall"—so many as are in favor of that motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Chair is in doubt. All in favor, please vote Aye on the voting machines—of the Harbaugh amendment—those opposed, vote No. That strikes the first phrase "The public shall have the right to expect". Have all—has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: The vote is 58 against and 30 for, so the motion is defeated. We're now back on the basic language of Section 8: "The public shall have the right to expect governmental agencies to afford reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision". Mr. McNeil's amendment and Mr. Davis' amendments having passed, they will be incorporated in the language we're now debating, so it says "reasonable" and it says "agencies"; but otherwise it's the way the committee wrote it.

Mr. Davis.

DELEGATE DAVIS: I move to amend Section 8 by adding to the end of the sentence, after the word "decision", "as provided by law".

Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Davis moves to add, on line 28, after the word "final decision", the phrase "as provided by law", so that the sentence reads: "to afford reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision, as provided by law."

Mr. Davis.

DELEGATE DAVIS: In Mr. Dahood's discussion of this, several times he said he expected the Legislature to establish guidelines for this and it's inferred the Legislature would and so forth. I think it would be clearer to put in the fact that we want the Legislature to establish some guidelines, rather than leaving it in doubt. Because when it comes time to interpret this, the journal may not be published and all the statements that are made here on the floor; so I think this would probably solve a problem in this regard, instead of leaving it by inference.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Mr. Chairman, I support Mr. Davis' amendment. It's probably already provided in the Administrative Procedure Act, which I'm not to familiar with. But at least this will prevent the multiplicity—just a lot of lawsuits over the interpretation of this section, because the notice and the public participation has to be provided by law.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman, I don't resist these motions at all. It had been my understanding, and I'm not sure I'm right about this, that almost all of these sections inferred "and as provided by law". In other words, we set up a right and infer that laws will be provided to implement them. But I think maybe I would like to hear from Mr. Dahood on this. Thank you.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I would not oppose the amendment. I think it's implicit within it. As we've indicated in Section 8, we are dealing with governmental agencies; and perhaps to more clearly respond to a previous question, "agencies", of course, has to be derived from the generic term of "agent". We have to have a principal and an agent. We're referring to those agencies, those boards, those bureaus that are created by the Legislature or by a city council. And of course the governmental unit that creates these agencies probably should be the one necessarily to set down specific guidelines, and I think that certainly is in accord with our intent that the Legislature shall set down some uniform rule or set of rules by which these agencies must provide for government participation. So I think—on behalf of the committee, I think I can safely state that we would have no objection to that amendment.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. Davis' motion to add the phrase "as provided by law" to the end of Section 8. All in favor of that amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted. Are there further amendments to Section 8, or is there further discussion? Very well, members of the committee, you have before you, on the recommendation of Mrs. Eck—

Mr. Romney.

DELEGATE ROMNEY: I wish to offer a substitute motion.

CHAIRMAN GRAYBILL: Very well.

DELEGATE ROMNEY: "Citizens shall possess the right to attend meetings of governmental units charged with the responsibility of administration of statutes and regulations. Such attendance shall guarantee hearing the deliberations at meetings, view the proceedings, and accept the invitation to offer suggestions."

CHAIRMAN GRAYBILL: Will the page go and get the language from Mr. Romney. All right, I'll read this carefully for you, for those of you who want to take it down. This is a motion—a substitute motion to delete Section 8 and add this language: "Citizens shall possess the right to attend meetings of governmental units charged with the responsibility of administration of statutes and regulations, period". "Such attendance shall guarantee hearing the deliberations at meetings"—I can't read the next word, Mr. Romney—

DELEGATE ROMNEY: "View".

CHAIRMAN GRAYBILL: —"view the proceedings"—"view", I guess it is. "Such attendance shall guarantee hearing the deliberations at meetings—comma—view the proceedings"—it probably should be "viewing the proceedings—comma—and accepting the initiative—initiation—the initiative to offer suggestions."

DELEGATE ROMNEY: "Invitation".

CHAIRMAN GRAYBILL: All right, "suggesting the invitation to offer suggestions"—"and accepting the invitation to offer suggestions." "Such attendance shall guarantee hearing the deliberations at meetings, viewing the proceedings, and accepting the invitation to offer suggestions."

Mr. Romney, do you care to discuss it further?

DELEGATE ROMNEY: Mr. Chairman, it is merely another attempt to solve this enigma. Otherwise, I might say (Inaudible) [res ipsa?] loquitur. (Laughter)

CHAIRMAN GRAYBILL: Or perhaps caveat emptor? (Laughter) All right, is there further discussion? (No response) If not, the issue is on Mr. Romney's motion—substitute motion to delete Section 8 and put in place of it language which says: "Citizens shall possess the right to attend meetings of governmental units charged with the responsibility of administration of statutes and regulations. Such attendance shall guarantee hearing the deliberations at meetings, viewing the proceedings, and accepting the invitation to offer suggestions." So many as shall be in favor of Mr. Romney's amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's defeated. Very well, we are debating Section 8, as amended. Is there other discussion? The amendments involve the word "reasonably" and the word "agencies". Members of the committee, you have before you, on the recommendation of Mrs. Eck that when this committee does arise and report, after having had under consideration Section 8 as amended, that it recommend this section be adopted. All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's amended—it's adopted as amended. Section 9. Wait a minute. Is this 9, Mr. Cate?

DELEGATE CATE: Yes it is.

CHAIRMAN GRAYBILL: Okay. Will the clerk read Section 9.

CLERK SMITH: "Section 9, Right to know. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of the state government and its subdivisions, except in cases in which the demand of individual privacy exceeds the merits of public disclosure." Section 9.

CHAIRMAN GRAYBILL: Mr. Clerk, you're supposed to read that "individual privacy clearly exceeds the merits of public disclosure." If you'll all look in your books, on page 6 and on line 3 thereof, between "privacy" and " exceeds", put in the word "clearly". The committee intends that word to be in there initially. The Chair will allow that amendment to the document: "except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure."

Mrs. Eck.

DELEGATE ECK: Mr. Chairman. I move that when this committee does arise and report, after having under consideration Section 9 of

Proposal Number 8, that it recommend that the same be accepted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: The committee, with two dissenting votes and after considerable reflection, adopted this provision explicitly establishing a public right to know. In the main, the provision is from Delegate Proposal Number 57. It is a companion to the preceding right of participation. Both arise out of the increasing concern of citizens and commentators alike that the government's sheer bigness threatens the effective exercise of citizenship. The committee notes this concern and believes that one step which can be taken to change this situation is to constitutionally presume the openness of government documents and operations. The provision stipulates that persons have the right to examine governmental documents and the deliberation of all public bodies or agencies, except to the extent that the demands of individual privacy clearly outweigh the needs of the public right of disclosure. The provision applies to state government and its subdivisions. The committee intends by this provision that the deliberations and resolution of all public matters must be subject to public scrutiny. It is urged that this is especially the case in a democratic society wherein the resolution of increasingly complex questions leads to the establishment of a complex and bureaucratic system of administrative agencies. The test of a democratic society is to establish full citizen access in the face of this challenge. The committee approvingly cites Section 82-3401 of *The Revised Codes of Montana*, 1947, which provides: "It is the intent of this act"—that's the Open Meeting Act—"that actions and deliberations of all public agencies shall be conducted openly." The people of the state do not wish to abdicate their sovereignty to the agencies which serve them. We do commend this particular bit of legislation, but we think that probably it is not enough and that this provision does go considerably farther and, as our government continues to grow, will provide a better basis than one that is purely statutory. The committee, during its deliberations on this provision, struck the word "public" from the phrase "to examine public documents". This was done to avoid tying the viability of this provision to the 1895 legislative efforts to define public and private writings. Sections 2 and 3 of Title 93, Chapter 1001 of *The Revised Codes of Montana*, 1947, define these two classes of writings. Broad categories of what constitute public writings are stipulated in Section 2; Section 3 proclaims that all other writings are private. The committee admits that this list of public writings is admirably broad; however, using this type of statutory construction is dangerous when one is attempting to establish a right to know. Judging from the example of federal and state statutes on the matter, it is better to stipulate the exclusions rather than the inclusions. To do otherwise is to risk losing the right to examine a document because it does not fit statutory categories as a public document. The committee intends by this provision that the right to know not be absolute. The right of individual privacy is to be fully respected in any statutory embellishment of the provision, as well as in the court decisions that will interpret it. To the extent that a violation of individual privacy outweighs the public right to know, the right to know does not apply. To clearly establish this point, the committee stipulated in the provision that the right to know is subject to the demands of individual privacy. And further to clarify this point, we added the word "clearly", with the intention of tipping the balance in the favor of the right to know. The committee commends this provision to the Convention as a long step forward in assuring the openness in government. By creating an atmosphere of openness in government, the committee believes that confidence in government will increase and governmental operations will be facilitated. Such a provision, far from limiting the effectiveness of governmental operation, establishes the prerequisite to the effective exercise of citizenship in a democratic society. I think most of you are aware of the fact that we've been getting quite a bit of static on this and especially—in fact, almost entirely—regarding the section which attempts to create the balance between the right to know and privacy. We were aware of this, really, from the beginning in our committee deliberations—the fact that there is a right to privacy involved in the right to know. I think it's come up time after time that we don't intend to open up the state income tax records; that in this case, for the most part, the right to privacy exceeds the demands for public disclosure. We do recognize, however, that there are some cases where the right to know what is in a document that might be classified may exceed the right to privacy. There are times when the right to know what is going on in a deliberation regarding personnel, which ordinarily would be classified and would not be public—we considered it private—but there are times when the public right to know clearly exceeds the individual person's right to privacy in this case. You might have an agency head, for instance, whose dismissal is being considered. If there is—if he is being dismissed for cause, I would think that the public has a right to know that reason of dismissal. There are times when this would apply to local school board situations, local government situations, and many others. Now, we have had a number of suggested revisions on this. The—I can't think of his name—from the School of Journalism, has suggested that we delete the entire last provision with—listing the exceptions. His feeling is that the court will provide the exceptions. We had assumed that the court also would pretty well define the exceptions; in other words, they would determine what the cases are in which the demands of privacy exceed the demands of public disclosure; and I think it was pretty well the agreement of our committee that we would prefer this method of determination. However, I understand that there are some in the body who would prefer leaving it to the Legislature, and, you know, you could end by—in the exception phrase—by saying something like, "except in cases in which the demands of privacy"—no, back further—"subject to these exemptions as may be prescribed by law, or by the Legislature." To my mind, I don't know that I can weigh the advantages of having the Legislature make this determination or the court make it. I think our committee decided, and I'll go along with them on it, that it would be better to leave it to the courts to make this determination; but surely, if this body decides that the Legislature would be a safer or a more responsive body to make the determination, I don't think that our committee would object greatly. For the present time, though, I would like to present it to the committee as it's stated, with our one amendment which inserts the word "clearly" as was read. Thank you.

CHAIRMAN GRAYBILL: Mr. Cate.

DELEGATE CATE: Mr. Chairman, members of the committee. I think that this provision is like the Biblical proverb—"the Lord giveth and the Lord taketh away." The first part of that paragraph does give the citizen the right to know, and the second part of that paragraph denies the citizen the right to know. I think under the second part of that paragraph, the fears of the Montana Press Association and other individuals who have written to us are well founded. Any governmental agency or officer could refuse on the grounds that individual privacy exceeded the merits of public disclosure, and in effect you would not have a right to know. You might very well also jeopardize the present statutes which we have in Montana dealing with the right to know; and therefore I think it is prudent to add to that provision a section which would permit the Legislature to set the situations in which individual privacy exceeds the merits of public disclosure as they have under the present public information act. So I have a motion before this body, which I would ask the clerk to read at this time, which I think will take care of that situation, meet the objections of the Montana Press Association as well. Thank you.

CHAIRMAN GRAYBILL: Will the clerk please read Mr. Cate's amendment.

CLERK SMITH: "Mr. Chairman. I move to amend Section 9 of the Bill of Rights proposal on page 21, line 19, by inserting, after the word 'except' and before the word 'in', the words 'as may be provided by law'. Signed: Cate."

CHAIRMAN GRAYBILL: Members of the body, that is on—if you're on page 6, that's on line 2—after the word "except", Mr. Cate would add "except as provided by law in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure". So Mr. Cate adds, after the word "except", "as may be provided by law"—the phrase "as may be provided by law"; so that the last phrase reads: "except as may be provided by law in cases in which the demands of individual privacy clearly exceeds the merits of public disclosure". It has the effect of putting the Legislature in as the arbiter of the cases excepted.

Mr. Cate, do you have anything further?

DELEGATE CATE: (Inaudible)

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman and fellow delegates. The committee worked long and hard on this particular section, and we invited testimony from members of the news media and we worked with their assistance. It was only after we completed our section that they suddenly, somewhere, from some place, decided that our section was too weak; and I'd like to quote from the testimony of Mr. Dan Foley in regarding this particular subject. He says: "I understand that this committee is very concerned about the right of privacy, and well that you should be in the era of credit checks and computer banks, wiretaps and bugging devices, and military spying on those exercising their rights of free speech and assembly. Governments, even state governments, collect information on all of us, some of which should not be in the public domain. I would never suggest, for example, that the people's right to know extends to inspection of individual income tax returns." He continues, "But I think the people's right to know about their government and individual citizens' right to privacy can be balanced in the Constitution. I understand you are considering a proposal which guarantees public access except in cases in which the demands of individual privacy exceed the merits of the public disclosure. I would endorse such a proposal. I much prefer it to any provision guaranteeing access—quote—'except as otherwise provided by law.' I don't think the latter provision would give the public or the press any access they don't already have under the state law and it might be an open invitation to legislation setting forth exceptions to the access rule." Now, it was the thinking of the committee that, in fact, the courts would have to strike the balance between the merits of public disclosure and the merits of privacy, and our committee had faith in our courts to strike this balance. And we did not feel that this particular provision should be left to the Legislature to interpret, and I would oppose the amendment of Delegate Cate. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: Mr. Chairman, as a substitute motion, I should like to make a motion to delete the section. I do this with tongue in cheek, because for 50 years I've been trying to accomplish and secure the right to know. But there have been some developments which came up since Dan Foley testified before the Bill of Rights Committee, and on the basis of that and the studies that were made by the Montana State Press Association, I take this position—

CHAIRMAN GRAYBILL: Mr. Martin, the Chair will allow your substitute motion to delete Section 9 in its entirety. Is that your point?

DELEGATE MARTIN: Yes.

CHAIRMAN GRAYBILL: Very well, you may discuss it.

DELEGATE MARTIN: In this morning's *Missoulian* there's an editorial and I'll just quote a little bit. The title to that is "Right to Conceal Must be Killed". "The right to know section proposed by the Constitutional Convention Bill of Rights Committee should better be called the right to conceal." Earlier in Section 8 we talked about a word "expect". The one word in this case is "except". The provision says, "No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand for individual privacy exceeds the merits of public disclosure." The words "except in cases in which the demands of individual privacy exceeds the merits of public disclosure" are causing widespread alarm among Montana newspapermen. They believe the words are so vague that they could be interpreted to allow almost any public board, agency or administrator to cover up vital public matters. The Montana Press Association has notified all delegates of its fear that the right to know section would become a vehicle for concealment. There is more of this than the concern being expressed by the press. This article could close much of government to all citizens, frustrating their ability to participate in the decisionmaking process and giving each—even more power to those who like to exercise power behind the scenes. The proposed section either should be amended so the dangerous wording is removed or, better yet, simply deleted entirely. An editor of the other sex, Donna Brown of the *Gallatin County Tribune*, said this last week: "I am positive that the Constitutional Convention delegates would never knowingly pass a section of the proposed Constitution if they thought it was unjust, unworkable, and would contravene one of the original freedoms guaranteed this nation by the founding fathers, freedom of the press, but this is what would happen if the Committee of the Whole does not change a section of the proposed Bill of Rights that will be debated in the near future." Mrs. Brown says, "I take strong exception to the wording, 'except in cases in which the demands of individual privacy exceeds the merits of public disclosure'. As it is written, the passage makes this section of the Bill of Rights very subjective, subject to the desire or whim of the agencies concerned, or possibly the Legislature. In the end, only the courts could settle the matter. This is what can happen when you let the Bill of Rights become a document for government manipulation and distributes a right unequally to the people. Our country is based upon absolute equal individual rights. Let's not, as Senator Irvin says, 'limit the right of the public to be informed with a faulty section in the Bill of Rights'. It would be better to eliminate the right to know provision altogether than to undermine our present freedoms, however much they may need strengthening." After recess this afternoon, I talked at some length with Francis Mitchell of Common Cause. I think that we have a mutual agreement of the absolute need for strengthening the right of the public to know. And I also talked with Mrs. Eck, as well as with Mr. Dahood, but we came—I came to the conclusion that you should give some consideration to the letters that came from the attorney for the Montana Press Association in Billings, as well as for the member of the faculty—of the Dean of the School of Journalism, and in their suggestions. I do hope that we can continue the spirit of openness which has marked this Convention, and I think we have made some great strides in regard to this openness of meetings. But let's not get it tangled up so that we have words like "except". Let's either be positive or not have anything at all. I hope the motion to delete prevails.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I oppose the motion to delete, and I think we ought to place proper focus on the position that's taken by the press. The gentlemen of the fourth estate seem to think they have no responsibility in a free society; they have a responsibility. And this particular section was not enacted for their benefit; it was enacted for the benefit of the citizen of the State of Montana. This particular section was in the rough draft that was circulated several weeks back. This particular section was framed after the gentlemen of the press themselves appeared before the committee and said this particular language was acceptable. Recently, someone in an ivory tower in an eastern state, apparently that represents some national press association, has read this particular section and, with his sophisticated training far beyond my own or that of any member of the committee, has decided that the wording in this particular section impairs the right of freedom in a free society. And in the State of Montana, apparently those that represent the press have paid some heed to that clarion call, and they make the same indictment. We're reasonable people. Let's read the section. The first sentence reads: "No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions." Language, of course, serves the purpose of communication. How much clearer can this communication be with respect to what is intended by the Bill of Rights Committee? What is there in that particular sentence that does not serve the public interest? What is there in that particular sentence that in any way injures or impairs the right of the press to ferret out the news and report to the public? What is there in that particular sentence that shackles the press from acting as a watch guard upon the activities of government for our benefit? Not for their benefit, to sell newspapers, but for our benefit. And the two purposes behind this section, as are the basic purposes behind the federal amendment contained within the Bill of Rights that provides freedom of the press, is twofold: one, to allow the press to be a watch guard on the activity of government and, second, to make sure that the rights of the individual citizen of a free democracy are protected. And that is the only justification for a free press in a democratic society. Now, let's go on to the second part of it—"except in cases in which the demand of individual privacy clearly exceed the merits of public disclosure". Now, what's our concern? Our concern is to make sure that this so-called right to access with respect to government documents, this right of access that we call freedom of the press, is being used to foster individual right and citizenship in this particular society of Montana. There's got to be a limit to it. The reason we organize in a free society is to make sure we have dignity, that we have privacy, that our private affairs are not open to public scrutiny. Now, if I go into a welfare department and I'm a poor citizen and I have to disclose my circumstances—circumstances I'm not proud of; perhaps circumstances that may reflect upon the children of tender years that I have to feed and clothe, whose parentage, perhaps, must be reflected in shadows that I don't want publicly disclosed—but I have to disclose those facts to gain assistance from the beneficent State of Montana. Should that be open to scrutiny? I'm injured—my medical history is important; perhaps I've had diseases I don't care to have disclosed publicly—but that medical history requires that these particular factors be placed within that particular governmental file so that there's sufficient basis for the claim that I make as provided by law. Should the press have access to that? And on and on. How about the confidential relationships that are set by statute that are zealously guarded? Should they not be protected? Should not communication with respect to a private matter that deals with some governmental concern between attorney and client not be protected? Perhaps there's some disclosure between priest and penitent, doctor and patient, the sacred relationships that are so important in a free society; should they not be paramount? Should they not be supreme? We are all trained to read our own language. Read this. Where within this language do you see anything that restricts the right of the press to know and to investigate and to examine that is not within the limits of fairness to all of us? They are here to serve us and to protect our rights, and we want our rights protected first and foremost and always. And I submit to you that as Chairman of the Bill of Rights Committee, I thought at times that the journalistic proboscis of the fourth estate was much too long, on many occasions, and was delving into concerns that were beyond fair press and fair report. But the members of my committee convinced me that the press wanted this particular declaration and it should be within the Bill of Rights and we would be forward among all the states in enacting this particular provision. And so I accepted their reasoning, and I accepted their concern, and I accepted their motivation. Most laudable, indeed, to balance the need to know with the need to have the press act as a watch guard upon government. Balance that with the basic right of individual dignity and privacy in the type of governmental structure which we have and which we enjoy. And I say to you here and now, Section 9 will serve that purpose. And this campaign that has been levied against it is not a just campaign and fails to strike the mark, because the mark that we strike is the one for the people of the State of Montana. Mr. Chairman, I oppose the amendment.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman, I'm concerned about Mr. Martin's proposal to strike this section. I've been trying to read along a little bit ahead and to find out just where else this same right is guaranteed, and I wonder what the answer to this question would be. If we strike out Section 9, the right to know, then where in our Constitution do we guarantee this same thing? And if it is not guaranteed just this way, then if it is left as a matter of law to government agencies to make this decision for themselves, then where do people have this guarantee? So I am going to work and vote to keep this section in, because I think it's necessary. Then a second thought occurs to me. If we do write it in, as Mr. Dahood has suggested, should it be absolute? Or should there be any exceptions? And the third thought occurred to me. If there should be any exceptions, then how do you write it in? If you don't write it in this way, then I'd like to hear—and I'm serious, now—this is dialogue on the subject—if there should be any exceptions, and particularly in view of the next section that we're going to present, the right to privacy, then how would you make a statement of the fact that there should be exceptions that—in a manner that would be superior to this?

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Mr. Chairman, I'd like to direct my remarks chiefly to Mr. Dahood, if he'd remain—(Laughter) No question. I'm serious, though, here, Wade. Mr. Cate made an amendment which I think at this stage I will support, and I didn't think you were opposing it till the remark you made just before you sat down, and apparently you may be. What concerns me here, though, is how this right is to be enforced. If we leave it to the courts, as Mrs. Eck suggested, the agency really makes the first determination. For example, supposing I wish to attend a public meeting. I go and the agency advises me that a man's individual privacy precludes me from attending. I then have to go to court and attempt to get an order allowing me to attend. The court may—by the time I can do that, the court might tell me, "Okay, the question is moot; the meeting is over." Or, for example, the welfare recipient. He goes and makes certain disclosures in order to get the benefit of welfare. Then the agency discloses this to the press. Well then, again, it's too late for him to come in and get an order, really, to protect himself. And I wonder if Mr. Cate's amendment allowing the Legislature to make some general laws in this area, right in the exceptions, might not be good. I'm not sure, and I'd appreciate your comments.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. The Legislature, of course, would still have the right to make any regulation that it deems necessary in conformity with Section 9. With respect to the fears and apprehensions which you have recited, I would much rather have that error made in favor of individual right than in favor of disclosure that might cause some particular problem or error or disgrace or indignity that would be beyond any type of remedy whatsoever. I think we can take any of these particular rights and we can carry our analogy out to the extreme and show where we can have problems, but we've got to have faith in the people that are representing us in governmental capacity. We've got to have faith in the people that are going to know about this particular section and know that they have a certain obligation and a certain responsibility to disclose these things. We've got to have faith in these people in cases where there is, without any doubt, the right of privacy to restrain that particular disclosure. I think when we make the comment that has been made and the critique, I think we're assuming that these people are not going to act responsibly. Nobody is going to act perfectly. Nobody is so completely perfect, that they're going to act in a manner where they're not going to make any mistakes, but we're going to reduce the chance for error in this connection. There may be a requirement for a court case or two or three to set a proper guideline, but isn't that the history of freedom? Isn't that why we have a Judiciary that's so supreme and that's so final, because there comes a time with all of our rights where a court test is required so that that particular right can be outlined and delineated with respect to the time within which that particular question has been raised. I submit to you there is no way to draft a perfect constitutional provision, but this provision does provide the practical guideline and the practical right and the practical obligation that we want here to accomplish the purpose that's intended. I submit to you that the motions to delete and the motions to amend should be rejected.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. President [Chairman]. I'm going to, if we ever get to it, talk in favor of Mr. Cate's amendment. But we're starting to discuss the philosophy of those—whether it should be by court or Legislature, and I hope we can vote on the deletion now and if that wins, that's the end of it. But if it doesn't, then I think we can go on to the other discussion.

CHAIRMAN GRAYBILL: Mr. Martin, do you want to close?

DELEGATE MARTIN: Mr. Chairman, we have on the statute books today the legislation—Section 82-3401 of the 1947 Codes, "Legislative intent—liberal construction. It is the intent of this act that actions and deliberations of all public agencies shall be conducted openly." Section 82-3402 provides meetings of public agencies to be open to the public, and it has some exceptions—national or state security, the disciplining of any public officer, the employment or appointment or something, the purchasing of public property, the revocation of a license, and law enforcement, and so forth. And then minutes of meetings, on Section 82-3403—"minutes of meetings", "public inspection", "open to the public". Now, the exception that we take with regard to this is not in the positive statements of—that is, "No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions". There is nothing wrong with that, but when we get to the "except", it then gives and provides some opportunities where some bureaucrat, some agency, some government official can shut up a classified file and make some decisions. That's the point. If it were just to end with subdivisions and just prior to the exception, there would be no question. And I think that, in view of the statutes that are there, a provision that would provide "except as provided by law". Now, Mr. Cate in his amendment, as I understand it, was going to continue, "in cases in which the demands for privacy exceed the merits of public disclosure". This was the basis on which our motion to delete was made, and as much as we'd like to see it decided, I think that we want you to know, not that we're trying to tell how people should do and how people should act—in the section on freedom of the press, there are some provisions there that those of us who don't do the right thing are subject to libel and slander actions, and some of us have been burned pretty badly by that. I hope the—my motion prevails.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Martin's motion—substitute motion to delete Section 9 in its entirety. Do you want a roll call vote?

DELEGATES: Yes.

CHAIRMAN GRAYBILL: Very well, we'll have a roll call vote. All those in favor of deleting Section 9 in its entirety, say—vote Aye; and all those opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: I'll close the ballot. Will you take the ballot.

Aasheim	Nay
Anderson, J.	Nay

Anderson, O.	Nay
Arbanas	Nay
Arness	Absent
Aronow	Nay
Artz	Nay
Ask	Nay
Babcock	Nay
Barnard	Nay
Bates	Absent
Belcher	Excused
Berg	Nay
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Nay
Brazier	Nay
Brown	Nay
Bugbee	Absent
Burkhardt	Nay
Cain	Nay
Campbell	Nay
Cate	Nay
Champoux	Nay
Choate	Nay
Conover	Nay
Cross	Nay
Dahood	Nay
Davis	Nay
Delaney	Nay
Driscoll	Aye
Drum	Absent
Eck	Nay
Erdmann	Nay
Eskildsen	Excused
Etchart	Aye
Felt	Absent
Foster	Nay
Furlong	Nay
Garlington	Aye
Gysler	Aye
Habedank	Aye
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Nay
Harlow	Nay
Harper	Nay
Harrington	Nay
Heliker	Nay
Holland	Aye
Jacobsen	Nay
James	Nay
Johnson	Nay
Joyce	Aye
Kamhoot	Absent
Kelleher	Nay
Leuthold	Nay
Loendorf	Nay
Lorello	Nay
Mahoney	Absent
Mansfield	Nay
Martin	Aye
McCarvel	Nay
McDonough	Nay
McKeon	Nay
McNeil	Nay
Melvin	Nay
Monroe	Nay
Murray	Nay
Noble	Nay
Nutting	Excused
Payne	Nay
Pemberton	Aye
Rebal	Nay
Reichert	Nay
Robinson	Nay
Roeder	Aye
Rollins	Nay
Romney	Nay
Rygg	Aye
Scanlin	Nay
Schiltz	Nay
Siderius	Nay
Simon	Aye
Skari	Nay
Sparks	Nay
Speer	Nay
Studer	Nay
Sullivan	Nay
Swanberg	Nay
Toole	Nay
Van Buskirk	Nay
Vermillion	Nay
Wagner	Aye
Ward	Aye
Warden	Nay
Wilson	Nay
Woodmansey	Nay
Mr. Chairman	Nay

CHAIRMAN GRAYBILL: We'll announce it twice, Marie. We'll announce it twice. Go ahead. Go ahead and announce the vote.

CLERK SMITH: Mr. Chairman, 14 voting Aye, 76 voting No.

CHAIRMAN GRAYBILL: The committee will be in order. 76 people having voted No and 14 having voted Aye, the motion to delete fails. We're now debating Mr. Cate's amendment.

Mr. Brown.

DELEGATE BROWN: Mr. Chairman, I rise to support the amendment of Mr. Cate. I think that Mr. Dahood and Mr. Cate and I are trying to get to the same thing. I agree with Wade that we should protect welfare records, medical records, and certain other things like adoptions, that should not be made accessible to newspapermen. However, I can see where this would be abused by a County Commissioner, a Governor, other state officials, using this exception in our present Constitution to deny access to public documents. As a result, you'd have to go to court and end up ultimately with the Supreme Court, which would take years in many cases. We'd be litigating hundreds of cases by public officials denying access. However, if you go along with Mr. Cate's amendment, when they see an abuse of this by public officials, then they can immediately amend the laws to provide for open access. So I go along with Mr. Cate. Don't let the courts tie this all up, but let the Legislature have flexibility provided by law—they've got a clear mandate under this article. Then we can have legislative support for it; and if the courts start to abuse the matter, then the Legislature can correct it. But if you get a narrow-minded court in future years and they narrowly construe this article, then Mr. Dahood's rights are out the window. So I hope the Convention will support Mr. Cate's amendment. Thank you, Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Cate's amendment has the effect of adding, on line 2 on page 6, this phrase: "except as may be provided by law in cases in which the demands for individual privacy clearly exceeds the merits of public disclosure".

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I don't think this kind of language belongs in the Bill of Rights anywhere. I think we're announcing principles here, and we shouldn't be referring things to the Legislature from the Bill of Rights. I can't see that this adds a thing to the Bill of Rights; and in answer to Mr. Brown's argument, he's throwing up a smokescreen about the Supreme Court and hundreds of cases. The Supreme Court will decide the issues involved here in one or two cases, and it's purely a smokescreen and should be disregarded. I don't approve the amendment.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman], I would support this amendment, too. It seems to me—from the discussion of the members of the majority of this committee, they indicate that this is in there by reference anyway, but we already have statutory law that I don't think they intend to repeal by this constitutional provision. It could be inferred they intend to repeal the open meeting part of the statutory law. It's important. As 20 years as County Attorney, there have been many, many things that you cannot make public disclosure on, particularly sex crimes and juvenile matters and that sort of thing. And it's really been no problem—I know in my area, anyway. I think if you make it "as provided by law", it's in keeping with the intent of the majority. They indicate that it's inferred that this will be done, and I'm sure they have no intention to repeal the present statutes on this subject but rather let them expand them and implement them as time goes by. So I'd support Mr. Cate's amendment.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, fellow delegates. I resist the motion of Mr. Cate very strongly and take exception to Delegate Davis' inference that the majority of the committee would, in fact, support this amendment. We discussed this question of "except in cases as provided by law" in our committee and rejected it and clearly felt that it did not belong in there. And we felt that the proposal of the committee was what, in fact, we wanted. And we felt confident that the courts would determine this in their wisdom, and we also felt that the Legislature could provide provisions within the determinations of the court to embellish it without specifically stating it. And I support the position of Delegate Schiltz, particularly in this regard, and also the position of the majority of the committee. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Skari.

DELEGATE SKARI: Mr. Chairman, would Mr. Dahood yield, please?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE SKARI: Mr. Dahood, in Section 82-3402, *Revised Codes of Montana*, in Section 4, they say that one of the exceptions is "the purchasing of public property, the investing of public funds, or other matters involving competition or bargaining which, if made public, may adversely affect the public security or financial interest of the state or any political subdivision or agency of the state." Does your Bill of Rights Section 9 cover that sort of thing? In other words, can the state's interest be protected here?

DELEGATE DAHOOD: Yes, I think the state's interest is protected in those instances where there's a need for that protection. Where you've got a bidding situation, of course, that particular matter must be kept confidential until the bidding is over.

DELEGATE SKARI: Mr. President [Chairman], would Mr. Dahood yield again?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE SKARI: Well, as I read it, Section 9 states "except in the case where the demand of individual privacy exceeds the merits of public disclosure". I have a little trouble with that.

DELEGATE DAHOOD: Well, Delegate Skari, what we are talking about here, of course, is protecting basically the right of the individual with respect to those matters that may affect him. I think what you're talking about is the statute that has to do with certain functions of government in securing property for the operation of government to serve the citizen, and I must confess I have not had occasion to review that statute recently. But I think, as you read it, that indicated that there must be some confidentiality up to a particular point; is that not true?

DELEGATE SKARI: Yes.

DELEGATE DAHOOD: And I think that's necessary for the integrity of government within that particular area. I do not think that anyone would expect to have information before a particular point of decision is reached in that situation, because the reason for it, of course, is to secure property for the government at the best obtainable price.

DELEGATE SKARI: Thank you, Mr. Dahood.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. Cate's amendment to add the words "as may be provided by law" after the word "except", so that the last clause reads: "except as may be provided by law in cases in which the demand of individual privacy clearly exceeds the merit of public disclosure". Do you want a roll call vote?

DELEGATES: Yes.

CHAIRMAN GRAYBILL: Roll call vote has been called for. All in favor of Mr. Cate's amendment, vote Aye on the voting machines; all opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Will the clerk take the ballot.

Aasheim	Nay
Anderson, J.	Aye
Anderson, O.	Aye
Arbanas	Aye
Arness	Absent
Aronow	Nay
Artz	Nay
Ask	Aye
Babcock	Nay
Barnard	Nay
Bates	Absent
Belcher	Excused
Berg	Aye
Berthelson	Nay
Blaylock	Nay
Blend	Aye
Bowman	Nay
Brazier	Aye
Brown	Aye
Bugbee	Absent
Burkhardt	Nay
Cain	Nay
Campbell	Nay
Cate	Aye
Champoux	Nay
Choate	Aye
Conover	Nay
Cross	Nay
Dahood	Nay
Davis	Aye
Delaney	Absent
Driscoll	Aye
Drum	Absent
Eck	Nay
Erdmann	Nay

Eskildsen	Excused
Etchart	Aye
Felt	Absent
Foster	Nay
Furlong	Nay
Garlington	Aye
Gysler	Nay
Habedank	Aye
Hanson, R.S.	Nay
Hanson, R.	Aye
Harbaugh	Nay
Harlow	Nay
Harper	Nay
Harrington	Nay
Heliker	Nay
Holland	Nay
Jacobsen	Nay
James	Nay
Johnson	Nay
Joyce	Absent
Kamhoot	Absent
Kelleher	Nay
Leuthold	Nay
Loendorf	Aye
Lorello	Nay
Mahoney	Absent
Mansfield	Nay
Martin	Aye
McCarvel	Absent
McDonough	Aye
McKeon	Nay
McNeil	Aye
Melvin	Aye
Monroe	Nay
Murray	Aye
Noble	Nay
Nutting	Excused
Payne	Nay
Pemberton	Nay
Rebal	Aye
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Aye
Romney	Nay
Rygg	Aye
Scanlin	Nay
Schiltz	Nay
Siderius	Nay
Simon	Nay
Skari	Aye
Sparks	Nay
Speer	Nay
Studer	Nay
Sullivan	Nay
Swanberg	Aye
Toole	Nay
Van Buskirk	Absent
Vermillion	Nay
Wagner	Aye
Ward	Aye
Warden	Aye
Wilson	Nay
Woodmansey	Nay
Mr. Chairman	Nay

CLERK SMITH: Mr. Chairman, 30 voting Aye, 56 voting No.

CHAIRMAN GRAYBILL: 56 having voted No and 30 voting Aye, Mr. Cate's amendment fails. We're back on Section 9 as submitted by the majority report here of the—by the Bill of Rights Committee report. Is there further discussion of Section 9?

Mr. McDonough.

DELEGATE McDONOUGH: Mr. President [Chairman], I now have to ask Mr. Dahood a question. Would he yield, please?

CHAIRMAN GRAYBILL: Mr. Dahood, would you yield?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE McDONOUGH: Mr. Dahood, would this section now—9, as it's now standing with the defeat of that amendment, would that allow a defendant in a criminal case more leeway and more power than he has now to examine the records of the County Attorney's office relative to the case that he's being tried for?

DELEGATE DAHOOD: No, I think not, Delegate McDonough, for this reason. I think all rights have to be balanced against a police power. I think the Supreme Court of the United States has announced that doctrine time and time and time again. We have a Criminal Code in the State of Montana that provides the discovery that you're talking about, and I think that would be balanced as against that particular section. I do not think that that would have any effect whatsoever upon a criminal situation.

DELEGATE McDONOUGH: Thank you.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman], would Mr. Dahood yield to a question?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE DAVIS: Mr. Dahood, for the benefit of the journal and the record here, is it your intention on this to repeal the existing statutes on open hearings, or do you feel that they would still remain in full force and effect?

DELEGATE DAHOOD: I feel they would still remain in full force and effect, Delegate Davis.

DELEGATE DAVIS: Thank you, Delegate—(Laughter)

CHAIRMAN GRAYBILL: Is there other discussion? Very well, members of the committee you have before you for your consideration, upon the recommendation of Mrs. Eck that when this committee does arise and report, after having had under consideration Section 9 of the Bill of Rights Article, that it recommend the same be adopted.

Mr. Heliker, for what purpose do you arise?

DELEGATE HELIKER: I would like to ask Mr. Dahood a question.

CHAIRMAN GRAYBILL: Okay. (Laughter) Mr. Dahood.

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE HELIKER: Mr. Dahood, being an ignorant nonlawyer, what is an individual?

DELEGATE DAHOOD: What is an individual?

DELEGATE HELIKER: Is it by any chance also a corporation?

DELEGATE DAHOOD: A person can, of course, Dr. Heliker, as you well know, be defined to include a corporation under the law.

DELEGATE HELIKER: I know a person can, but can an individual?

DELEGATE DAHOOD: An individual, in my judgment, would not be a corporation, no.

DELEGATE HELIKER: Thank you.

CHAIRMAN GRAYBILL: Well, the Chair doubts that it needs to restate that lingo. All those in favor of this motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: So ordered. Section 9 is adopted. Will the clerk please read Section 10.

CLERK SMITH: "Section 10, Right of privacy. The right of privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest." Section 10, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10 of Proposal Number 8, it recommend that the same be adopted.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman, fellow delegates, the right of privacy is a right which is not expressly stated in either the United States or the Montana Constitution. It is our feeling, on the Bill of Rights Committee, that the times have changed sufficiently that this important right should now be recognized. If I may, Mr. Chairman, I would like to add an amendment which the committee has made, and I would like it voted on before I continue. This would be to the—add to Section 10 the right of individual privacy.

CHAIRMAN GRAYBILL: Is that on line 5 of page 6?

DELEGATE CAMPBELL: Yes, Mr. Chairman, and the committee has unanimously approved this amendment and would request a vote on it if necessary.

CHAIRMAN GRAYBILL: So many as shall be in favor of adding the word "individual" so that it reads: "the right of individual privacy", as the committee wishes to have this matter considered, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: So ordered.

DELEGATE CAMPBELL: This would exclude any question about a government or a corporation. In our early history, of course, there was no need to expressly state that an individual should have a right of privacy. Certainly, back in 1776, 1789, when they developed our Bill of Rights, the search and seizure provisions were enough, when a man's home was his castle and the state could not intrude upon this home without the procuring of a search warrant with probable cause being stated before a magistrate and a search warrant being issued. No other protection was necessary; and this certainly was the greatest amount of protection that any free society had given its individuals. In that type of a society, of course, the neighbor was maybe 3 to 4 miles away. There was no real infringement upon the individual and his right of privacy. However, today we have observed an increasingly complex society and we know that our area of privacy has decreased, decreased, and decreased. The United States Supreme Court, in Griswold versus Connecticut, had to construe the right of privacy as an implied right and, in that case, held that the right of privacy extended into the marital privacy, that the state did not have a compelling state interest in going into the bedroom of a married couple to prevent contraception. And they ruled the Connecticut anticontraception law invalid as invading the right of privacy. Now, we don't know how the interpretations will go from there, what the Supreme Court will do. We feel, in the Montana Supreme Court, it has recognized the right of privacy, although it has not been expressly stated in the Montana Constitution. What this would do—by requiring that this area of privacy be protected unless there is a showing of a compelling state interest, it produces what I call a semipermeable wall of separation between individual and state; just as the wall of separation between church and state is absolute, the wall of separation we are proposing with this section would be semipermeable. That is, as a participating member of society, we all recognize that the state must come into our private lives at some point; but what it says is, don't come into our private lives unless you have a good reason for being there. We feel that this, as a mandate to our government, would cause a complete reexamination and guarantee our individual citizens of Montana this very important right—the right to be let alone; and this has been called the most important right of them all. You've all had placed on your desk the *Montana Standard's* editorial of February 3, 1972. I think it states it very well. "Times change. That, in a nutshell, is why the Constitutional Convention delegates in Helena are working on a new and more modern governmental charter for Montana. Today, with wiretaps, electronic and bugging devices, photo surveillance equipment and computerized data banks, a person's privacy can be invaded without his knowledge and the information so gained can be misused in the most insidious ways. It isn't only a careless government that has this power to pry; political organizations, private information gathering firms, and even an individual can now snoop more easily and more effectively than ever before. We certainly hope that such snooping is not as widespread as some persons would have us believe, but with technology easily available and becoming more refined all the time, prudent safeguards against the misuse of such technology are needed. Some may urge and argue that this is a legislative, not a constitutional issue. We think the right of privacy is like a number of other inalienable rights; a carefully worded constitutional article reaffirming this right is desirable. Wade Dahood of Anaconda, Chairman of the Bill of Rights Committee, hit the nail on the head when he said: 'As government functions and controls expand, it is necessary to expand the rights of the individual.' The right to privacy deserves specific protection." Mr. Chairman, I would recommend the adoption of this section.

CHAIRMAN GRAYBILL: Very well, is there discussion?
Mrs. Babcock.

DELEGATE BABCOCK: May I ask a question, please? Would this preclude a corporation made up of family members?

DELEGATE CAMPBELL: It's not—it is intended to protect the individual as we have described it. We do not feel that a corporation is an individual. It can be considered a person, but not an individual. We don't think that this would apply in that area.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman. I'd like to move an amendment that, on line 7, after the word "infringe", we put a period and strike out the rest of the sentence. On line 7, after the word "infringe", simply put a period and strike out the words "without the showing of a compelling state interest" and let this statement about right of privacy simply stand just right there, barefaced, on its own; that we have the right to privacy as stated. Section 11 gives some leeway to that for the state in a lawful way to go about invading the right to privacy in the section on searches and seizures. I am a little worried about that phrase "without the showing of a compelling state interest" because that may be interpreted by whatever state agency happens to have an interest in invading my privacy at that particular time.

CHAIRMAN GRAYBILL: Very well, the Chair will allow Mr. Harper's amendment to strike the last phrase of Section 10 and put a period after "infringed"—strike the words "without the showing of a compelling state interest". Is there discussion on Mr. Harper's amendment?

Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I would agree with Delegate Harper's amendment. The right of privacy is recognized within the law, has been amply defined in case after case within the common-law area. The last phrase that Delegate Harper seeks to strike does not really serve any necessary purpose, inasmuch as the very definition of the right of privacy as we know it in the law takes care of that particular phrase and, consequently, the other matters where the state is involved would have to be balanced against this right. Our committee does not object to the amendment.

CHAIRMAN GRAYBILL: Very well, the issue arises upon Mr. Harper's amendment that would strike the words "without the showing of a compelling state interest" and put a period after "infringed" on line 7, page 6, in Section 10. So many as shall be in favor of Mr. Harper's amendment, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and so ordered. Is there further discussion of Section 10? Members of the committee, you have before you, upon the recommendation of Mr. Campbell that when this committee does arise and report, after having had under consideration Section 10 as amended, that this committee recommend that the same be adopted. All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Section 10 is adopted. Will the clerk read Section 11.

CLERK SMITH: "Section 11, Searches and seizures. The people shall be secure in their persons, papers, homes and effects from unreasonable searches and seizures and invasions of privacy, and no warrant to search any place or seize any person or thing shall issue without describing the place to be searched or the person or thing to be seized, nor without probable cause, supported by oath or affirmation, reduced to writing." Section 11, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Section 11 of Proposal 8, it recommends that the same be adopted.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman, in this searches and seizures provision, Number 11, we have the outline as is written up on page 24. I won't bother to read that to you. I'm sure you can go through it if you have any questions. You may note that in our rough draft when we did present it to the Convention, it did contain specific information regarding electronic equipment and surveillance. We at the committee felt very strongly that the people of Montana should be protected as much as possible against eavesdropping, electronic surveillance, and such type of activities. We also recognize that there may in the future be a legitimate need for such in legitimate police activities. After careful consideration of the rough draft that we did produce, we found that the citizens of Montana were very suspicious of such type of activity. We found from the law enforcement officers we talked to that there was really not a need and such activity was not taking place at this time. We had then decided that what we had done was made constitutional something that we may someday want to regulate or even abolish. There were people that would—testified to our committee that the wiretapping and such should be abolished expressly in the Constitution. It was our feeling, after considering this, that it should not be solidified and cemented into the Constitution; it should be made a legislative matter; and as such, we have removed reference to it from the Constitution. It is not prohibited; and we have added, in addition, that a person's papers, homes, effects should be protected as well as invasions of his privacy. This is a two-pronged approach with the other right of privacy in Section 10. This is one that would affect the officer and the local person enforcing the law. It would not make any more difficult his right to receive a search warrant. It was our feeling that express language concerning electronic equipment should be dealt with by the Legislature and should not be solidified in the Constitution. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Will Mr. Campbell yield to a question?

CHAIRMAN GRAYBILL: Mr. Campbell?

DELEGATE CAMPBELL: I will yield.

DELEGATE ROBINSON: I'm confused by your remarks and by the comments of your committee. It seems to me that your committee very clearly and very strongly wanted to prohibit the future use of wiretapping or any other type of electronic surveillance in the State of Montana. And it seems from your comments that, you know, there is certainly no justification for it in this state; yet you are leaving it open, are you not, by your saying that—in essence that it can be done if probable cause can be shown, or if a warrant can be obtained?

DELEGATE CAMPBELL: No, we are not mentioning it in the search and seizure provision. There was some testimony before our committee that under the present Montana statutes, wiretapping is illegal—or at least under the present state of the law, which is, at best, in flux. It was the feeling of some that putting it in the Constitution would legalize it forever and that we would not be able to change it. If there is going to be any invasion of privacy by intercepting this communication, it will have to be done specifically by the Legislature. It was our feeling that we could not present to the Convention and the State of Montana an absolute prohibition which would forever preclude law enforcement from ever using these things, which some day it may need to use.

DELEGATE ROBINSON: Mr. President [Chairman], will Mr. Campbell yield to another question?

CHAIRMAN GRAYBILL: Mr. Campbell?

DELEGATE CAMPBELL: I will yield, Mr. Chairman.

DELEGATE ROBINSON: I don't see, really, how you can talk about privacy and in the same breath mention the possibility of wiretapping or electronic surveillance. I think these are probably two most incompatible things that you could ever have. I would wonder what the committee or Mr. Campbell's feeling might be. On your committee comments on page 25, you state, in line twenty-six and a half and twenty-seven and a half, that the committee believes that the privacy of communications should remain inviolate from state-level interception. I was wondering if the committee would accept a similar statement—privacy of communications shall be inviolate—as an amendment to Section 11 if your committee was—really believes what your comments say on page 25.

DELEGATE CAMPBELL: Yes, we do really believe it. We would accept it and as a committee we would endorse it.

DELEGATE ROBINSON: Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: I have an amendment, then, for Section 11, and I'll get it right up there.

CHAIRMAN GRAYBILL: Very well, Mrs. Robinson's amendment is as follows: "I move to amend Section 11 of the Bill of Rights Committee proposal, on line 16 on page 5—page 6, by adding to the following sentence at the end thereof: 'Privacy of communications shall be inviolate.'" 'Privacy of communications shall be inviolate.'

Mrs. Robinson.

DELEGATE ROBINSON: Mr. Chairman, this is simply, you know, a very short statement of the committee's comments and language on page 25. I feel that this is something that the committee obviously felt very strongly about, yet did not put it in the Constitution. I also feel very strongly about this state not ever, ever engaging in wiretapping. I just finished a book by Schwartz of New York State University dealing very extensively with wiretapping. He cites instances after instances where there is no actual proof or even the slightest indication that the gains from wiretapping can ever in any way measure up to the invasion of privacy perpetrated by wiretapping. Privacy, I think, is the right most valued by all men. And Justice Brandeis said that a wiretap, simply because it picks up both sides of all conversations, of all calls made by or to all persons using telephones under surveillance, by definition constitutes a general search, committed not only against a person under suspicion but against many others. I think that if you look at any statistics dealing with wiretapping, you will see that the value of wiretapping in no way measures up to the infringement on private property—private privacy. For example, in 1968 the federal-state officials overheard 4,000 people in 66,000 different conversations, wiretapped conversations. Not a single conviction. In 1969, state and federal officials both overheard 31,000 people in a hundred and seventy-three different conversations. One-third of one percent of the people overheard were convicted, at a cost of something in excess of $680,000. Similar situation occurred in 1970 where 25,000 people were listened to in 300,000 conversations. One-half of the 1 percent of the people overheard on these wiretaps were convicted, and the cost of such wiretapping and electronic surveillance exceeded $3 million. None of these wiretaps were—are—include those in national security or in one-party surveillance. I think it's quite clear that no case has been or can be made for wiretapping in the State of Montana, to have such a blatant disregard of privacy of individuals.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Will Mrs. Robinson yield for a question?

DELEGATE ROBINSON: Yes.

DELEGATE HOLLAND: Mrs. Robinson, I appreciate and agree with your statistics on wiretapping, but you understand that the telephone company sometimes uses blocks to locate obscene phone taps—or phone calls—that this would also rule out monitoring to see where these were coming from. Because you use such a broad term as "communications".

DELEGATE ROBINSON: Yes.

DELEGATE HOLLAND: And may I ask one further question? Will you yield for one further question?

DELEGATE ROBINSON: Yes.

DELEGATE HOLLAND: For instance, "communications" is broad enough for checking mail; that now the prisons can't go through the mail of the prisoners to check on what information they might be passing out, including possible plans for escape or to bring weapons.

DELEGATE ROBINSON: Well, I think that in the area of mail, which would certainly be covered by federal statutes, federal regulations, that anything a state constitution would write in terms of mail inspection would certainly be superseded by the federal regulations of the mail.

DELEGATE HOLLAND: Well, I haven't read the federal statutes on wiretapping, but I presume because they are—there is a certain amount of interstate commerce, they might—it might also—I have no further questions.

Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: I resist the amendment upon the grounds that, while I am in sympathy with the fact that—and support the position that there should be no wiretapping or other electronic surveillance, I think "communications" is too broad, because it could be stretched to anything—mail; putting blocks in the line as telephone companies do to—when women are being bothered by obscene phone calls, to pick up who's doing the calls; telegrams—communications could even be notes being passed back and forth in prison or any of a number of different situations. And as I say, while I agree with the thinking behind it, and—I agree more with Mr. Campbell that this thing can be covered much better by legislation, which can be more specific and which can meet the shifting requirements that are required by such statutory matters.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. President [Chairman], I feel this is all immaterial. We've—in Section 10 we gave the absolute right of privacy without any exceptions regardless of the state interest or any compelling interest. So we've already given them—we've opened the door, and I don't think anything we do now to limit it—we'd be in direct conflict with Section 10. But that's the way the Convention feels; we're going to legislate right through this.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman, I would like to amend Delegate Robinson's amendment by placing the word "oral" between "privacy"—between "of" and "communications". Her amendment would then read: "Privacy of oral communications shall be inviolate".

Mr. President.

CHAIRMAN GRAYBILL: Just a moment. Mr. Campbell's amendment would add the word "privacy of oral communications shall be inviolate"—adding the word "oral" to Mrs. Robinson's amendment.

Mr. Campbell.

DELEGATE CAMPBELL: I feel that the concern was in wiretapping and interception of oral communications. This would eliminate any question on written types of letters, notes and that sort of thing, packages through the mail, which there is a legitimate right in many cases to search and to seize. I feel that with "oral communications" you are not excluding the legitimate law enforcement people who, with the consent of one party, the person who is being threatened by phone calls and things like this, to act on behalf of that victim. The privacy of that individual certainly could be waived with his or her consent, and there's certainly no privacy toward the obscene caller. I feel that this would not hinder law enforcement in that respect at all. If there were situations such as kidnapping, certainly the federal law would prevail. The federal law does provide a number of areas for wiretapping. They certainly are available; they could be used. For the State of Montana, I do not feel that it would be necessary, and it certainly would be expensive, to employ this type of electronic surveillance. I think we would have the adequate protection, and I feel that with that amendment it would be acceptable. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Melvin.

DELEGATE MELVIN: Will Mrs. Robinson yield to a question, please?

CHAIRMAN GRAYBILL: Mrs. Robinson?

DELEGATE ROBINSON: Yes.

DELEGATE MELVIN: Mrs. Robinson, did I understand you correctly that you felt that this—your amendment would forbid the telephone company and law enforcement officers to trace obscene telephone calls?

DELEGATE ROBINSON: I'm not sure whether it would or not. I feel that these things may have to be—I really don't know how, technically, they do it—if they do it by a bug or by tapping lines. I know any time that I've had an obscene phone call, they can't do—they never are able to get it anyway. (Laughter)

DELEGATE MELVIN: Thank you, Mrs. Robinson.

DELEGATE ROBINSON: But I'm not sure how they do it, or how they don't do it.

DELEGATE MELVIN: Thank you, Mrs. Robinson.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Melvin.

DELEGATE MELVIN: I have to speak in opposition to Mrs. Robinson's amendment for that one reason. One of the nastiest, most difficult offenses that is reported to police departments and sheriffs' offices is the obscene phone caller, and in spite of the statistics that have been spread here this evening, there have been some identified. It has not always resulted in criminal prosecution. Sometimes it has resulted in treatment by appropriate psychiatrists or others. But I do feel that this is an area that it's only possible to reach it in this manner. Thank you.

CHAIRMAN GRAYBILL: Mr. Vermillion.

DELEGATE VERMILLION: Would Mr. Melvin yield to a question, please?

DELEGATE MELVIN: I yield.

DELEGATE VERMILLION: Mr. Melvin, I was wondering now, on these obscene phone calls, does the receiving party know that the telephone company is intercepting the message?

DELEGATE MELVIN: Yes.

DELEGATE VERMILLION: Well then, this—I'm wondering if this would be a private communication then? It might be that in this instance, this proviso would cover that. I'm wondering—

DELEGATE MELVIN: Well, I could only assume that a court would interpret a communication as a dialogue between two people. Does that answer your question?

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Yes, let me answer that question, Mr. Chairman. First of all, this does not in any way relate to the obscene phone call situation, nor does it relate to the ability of the telephone company to make the traces. The logic and the reason is this: all personal rights, constitutional or otherwise, may be waived. Lady A is receiving the obscene phone call. She waives her right and grants the telephone company the right to intercept that communication. The individual that's making the call does not have the right of privacy with respect to violating the law and making the obscene phone calls, so as a consequence, we are not interfering with anyone's rights by having the telephone company attempt to intercept and discover and determine who the caller is; we are protecting the right of privacy. So as a consequence, may I say that that objection would not be one that we would have to worry about under the law, and the amendment proposed by Delegate Robinson would not in any way interfere with that situation.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman, I'll have to admit that Mrs. Robinson is probably better endowed for obscene phone calls than I am, and I'll have to yield to her knowledge in that respect. (Laughter)

CHAIRMAN GRAYBILL: I'm sure you do so reluctantly, Mr. Holland. (Laughter)
Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman], would Mrs. Robinson yield to a question?

DELEGATE ROBINSON: If it's not obscene. (Laughter)

DELEGATE DAVIS: Mrs. Robinson, if there'd been the crime of murder committed and you and I were standing here and I said that I shot that dirty s.o.b., not to be obscene, would that be an oral communication?

DELEGATE ROBINSON: Well, yes.

DELEGATE DAVIS: And then you would not want to be in a position where you could testify in court that I had made that statement?

DELEGATE ROBINSON: Oh, I think that's totally irrelevant.

DELEGATE DAVIS: Not if it says in the Bill of Rights "privacy of oral communications is inviolate", is it?

DELEGATE ROBINSON: Are you not, in essence, giving up your right to total privacy when you tell me what you've done?

DELEGATE DAVIS: You're guaranteeing I can't give up my right of total privacy. There's nothing in here about a waiver, is there?

DELEGATE ROBINSON: Oh, no. You're —there's a difference between your knowing that you're telling me and you know whether there is someone around us listening or if it's just you and I; whereas, on the telephone, you may tell me that and you may suspect that I'm the only one listening, but you certainly may not know that.

DELEGATE DAVIS: Mr. President [Chairman], I would have to rise in opposition to this. After 20 years in law enforcment, there's still some rights of the citizens that have to be protected. In law enforcement, it seems to me oral communications could be a communication that was overheard if I were telephoning someone. It could be a communication overheard on radios between a stakeout and—as was demonstrated in London awhile back, where they overheard them talking about robbing the bank. It seems like it goes a lot further than electronic surveillance and wiretapping, which I think they originally had in mind. If they could clear it up in that regard, it might be acceptable.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman, it's not very often I have a little bit of legal knowledge to impart, but I think that there was a case just in this last year that involved something very much like you described, where there—it was not a case of wiretapping; it was a case of a sister-in-law who was listening—or a sister who was listening in on a communication, and the court ruled that this evidence could not be used because it was a violation of privacy. This had nothing to do with wiretapping, but I think that in this case, it would not be admissible evidence.

CHAIRMAN GRAYBILL: Mr. Gysler was up next.

DELEGATE GYSLER: Mr. Chairman, on page 25, line 13, I read: "The committee had incorporated into the tentative rough draft safeguards for wiretapping, electronic surveillance and other means of communications interceptions." After hearing further testimony, the committee decided to delete any reference to interceptions of communications. And yet, now, the mere mention of it on the floor and they say, "We're for it." I don't know. They really leave me kind of in a state of confusion, so I think I will go along with their written testimony and vote against the amendment.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I'd like to respond to what Delegate Gysler has to say, and I think there's some basis for what he does say. First of all, we agreed that we would go along with an amendment that would prohibit electronic surveillance in the State of Montana. The committee is still of that opinion. After listening to testimony, after examining briefs that were submitted to us, after analyzing the situation, it is inconceivable to any of us that there would ever exist a situation in the State of Montana where electronic surveillance could be justified. And the thinking throughout the United States is, electronic surveillance shall be justified only in matters involving national security, perhaps in matters involving certain heinous federal crimes where the situation is such that in those instances we must risk the right of individual privacy because there is a greater purpose to be served. But within the area of the State of Montana, we cannot conceive of a situation where we could ever permit electronic surveillance. And our intention was—in responding to the proposed amendment; that we would not object to it—was to allow an amendment that would prohibit electronic surveillance in the State of Montana. That is the committee explanation.

CHAIRMAN GRAYBILL: Very well, the issue is on Mrs. Robinson's motion to amend Section 11 by adding the phrase: "Privacy of oral"—no, let's see, it's on Mr. Campbell's amendment to add the word "oral" to Mrs. Robinson's amendment, so it would read: "Privacy of oral communications shall be inviolate."

Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I think I'm compelled to state that that particular language, with all due respect to Delegate Robinson, does present some problems. I'm not satisified in my own mind at this time that that is going to reach the electronic surveillance that we want to proscribe, and I think that perhaps that amendment might be withdrawn and perhaps the term "electronic surveillance" put in the phrase that's suggested by way of amendment.

CHAIRMAN GRAYBILL: Mrs. Robinson.

DELEGATE ROBINSON: Mr. President [Chairman], I would be glad to withdraw that amendment. The wording bothers me too, and I took it directly from the committee report. So anything that Mr. Dahood could come up with that would meet my objectives would be fine.

CHAIRMAN GRAYBILL: Do I understand, Mrs. Robinson, that you wish to withdraw your amendment?

DELEGATE ROBINSON: (Inaudible)

CHAIRMAN GRAYBILL: Mr. Campbell, are you going to withdraw your "oral" word?

DELEGATE CAMPBELL: Yes, I will.

CHAIRMAN GRAYBILL: All right, both Mr. Campbell's and Mrs. Robinson's amendments are withdrawn.

Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman, could I ask Mr. Dahood a question?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I yield.

DELEGATE BABCOCK: When the Governor has a device on his telephone that has a beep on it when someone calls in and then your voice is recorded, when you call into the Governor's mansion, is that electronic surveillance?

DELEGATE DAHOOD: It's electronic, but it's done with the consent of the participants in that conversation.

CHAIRMAN GRAYBILL: Very well, the issue before us is Section 11, unamended.

Mr. Loendorf.

DELEGATE LOENDORF: There are no present amendments before us, then, regarding wiretapping, et cetera?

CHAIRMAN GRAYBILL: Mr. Dahood's pencil is busy, but there are none before us.

DELEGATE LOENDORF: May I ask Mr. Campbell a couple of questions, then, while Mr. Dahood is writing? (Laughter)

CHAIRMAN GRAYBILL: Mr. Campbell, would you yield?

DELEGATE CAMPBELL: I will yield.

DELEGATE LOENDORF: There are a couple of things that concern me here, Bob, although not too much because I know the federal case law protects us. But assuming there was no federal law, in Section 10 we now provide for a right of privacy which will not be infringed. In Section 11, which appears now to me to be an exception to Section 10, we allow for invasions of privacy on a showing of probable cause. Now, this leads me to believe that, in the example you gave, the contraception case, that the police could go into court and, on a mere showing of probable cause that a crime is being committed, obtain the search warrant to go in and search unless our state court, as the federal court has done, invented a better right of privacy than I think we have stated here. Since we've removed the provision that a compelling state interest also be shown, I think the officers could merely go in. And I'm wondering if you think we've really changed the law at all by the addition of Section 10 and the additions to Section 11.

DELEGATE CAMPBELL: I see your objection and I would agree with your reasoning. I certainly would have no objection and would heartily support an amendment you might have to delete invasions of privacy from Section 11, to leave it in its original form.

CHAIRMAN GRAYBILL: Mr. Loendorf, you've been invited to amend Section 11 by dropping the words "and invasions of privacy". Do you wish to?

DELEGATE LOENDORF: I'll leave that to the committee to do that. I just wish to point that out.

CHAIRMAN GRAYBILL: All right, the committee—Mr. Campbell now moves that we strike, on line 11, the words "and invasions of privacy" from Section 11, since we have taken the clause out up above. Because otherwise, the modifier "unreasonable" seems to weaken Section 10. Mr. Campbell, your amendment to strike "invasions of privacy" will be allowed. Is there discussion?

Mrs. Robinson, do you want to discuss this new matter?

DELEGATE ROBINSON: Yes, because this was the objection that I had, because I think that in Section 10 we did protect the right of privacy, but in Section 11, as it was written, it seemed to me that an invasion of privacy could be—would be okay as long as you had a warrant or could show probable cause or these other things. To me, an invasion of privacy is wiretapping and electronic surveillance. If you eliminate invasion of privacy from this section, then you have precluded wiretapping and electronic surveillance and I'm happy.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Campbell's motion to strike the words "and invasions of privacy" on lines 11 and 12 of Section 11 on page 6. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: The Ayes have it, and the offensive words are stricken. Now, is there—are there further amendments to Section 11? Members of the committee, you have before you for your consideration, upon the recommendation of Mr. Campbell that when this committee does arise and report, after having had under consideration Section 11 as amended, that it recommend the same be adopted. So many as shall be in favor of that motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as shall be opposed, No.

(No response)

CHAIRMAN GRAYBILL: It's adopted. Members of the committee, the Chair is quite pleased that we've gone as far as we've gone. And I see a section coming up that might take some time; I think maybe we should go home.

Mr. Murray, would you like to make a motion?

DELEGATE MURRAY: Mr. Chairman, I move that the committee rise, report progress, and ask leave to sit again.

CHAIRMAN GRAYBILL: The motion has been made that the committee rise and report progress. All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed? (No response)

CHAIRMAN GRAYBILL: So ordered.

(Proceedings moved from Committee of the Whole into Convention. President Graybill in Chair.)

PRESIDENT GRAYBILL: If you'll just remain for a minute now, we'll finish up. Will the clerk please read the title of the committee report.

CLERK SMITH: "March 7, 1972. Mr. President: We, your Committee of the Whole, having had under consideration Report Number 8 of the Committee of Bill of Rights, recommend that the committee rise and report progress and beg leave to sit again. Signed: Graybill, Chairman."

PRESIDENT GRAYBILL: Members of the committee, hearing no objection, we will not read the entire committee report. So many as shall be in favor—

Oh, Mr. Murray, you want to make the motion?

DELEGATE MURRAY: Mr. President, I move we adopt the Committee of the Whole report.

PRESIDENT GRAYBILL: The motion is to adopt the Committee of the Whole report. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered. Mr. Murray.

DELEGATE MURRAY: Mr. President, I move that the Convention adjourn until the hour of 9:00 a.m., March 8, 1972.

PRESIDENT GRAYBILL: The motion is to adjourn until 9:00 a.m. tomorrow morning. All in favor, please say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: Thank you very much for coming tonight.

(Convention adjourned at 10:13 p.m.)

March 8, 1972
9:10 a.m.

Fortieth Day

Convention Hall
Helena, Montana

PRESIDENT GRAYBILL: The Convention will be in order. If you'll all rise, Delegate Harbaugh will lead us in the invocation.

DELEGATE HARBAUGH: Let us pray. God, our Father, we do not begin our days here with an invocation just for the sake of ritual, nor because it is traditional to do so, but because we sense that unless the Lord builds the house, those who build labor in vain. We do not know what the future holds, yet we strive to produce a guide for that future. So give us grace today to believe that even though we cannot look beyond our own time with clarity, you hold all time in your hands through Jesus Christ, our Lord. Amen.

PRESIDENT GRAYBILL: We'll take attendance by voting Aye on the voting machines.

CLERK HANSON: Delegate Berg, Delegate Bowman, Delegate Brown, Delegate Cate, Delegate Choate, Delegate Dahood. Mr. President, may Delegate Eskildsen be excused, please?

PRESIDENT GRAYBILL: He may.

CLERK HANSON: Delegate Berg, Delegate Bowman, Delegate Brown, Delegate Choate, Delegate Toole, Delegate Berg.

PRESIDENT GRAYBILL: Take the vote.

Aasheim	Present
Anderson, J.	Present
Anderson, O.	Present
Arbanas	Present
Arness	Present
Aronow	Present
Artz	Present
Ask	Present
Babcock	Present
Barnard	Present
Bates	Present
Belcher	Present
Berg	Absent
Berthelson	Present
Blaylock	Present
Blend	Present
Bowman	Absent
Brazier	Present
Brown	Absent
Bugbee	Present
Burkhardt	Present
Cain	Present
Campbell	Present
Cate	Present
Champoux	Present
Choate	Absent
Conover	Present
Cross	Absent
Dahood	Present
Davis	Present
Delaney	Present
Driscoll	Present
Drum	Present
Eck	Present
Erdmann	Present
Eskildsen	Excused
Etchart	Present
Felt	Present
Foster	Present
Furlong	Present
Garlington	Present
Graybill	Present
Gysler	Present
Habedank	Present
Hanson, R.S.	Present
Hanson, R.	Present
Harbaugh	Present
Harlow	Present
Harper	Present
Harrington	Present
Heliker	Present
Holland	Present
Jacobsen	Present
James	Present
Johnson	Present
Joyce	Present
Kamhoot	Present
Kelleher	Present
Leuthold	Present
Loendorf	Present
Lorello	Present
Mahoney	Present
Mansfield	Present
Martin	Present
McCarvel	Present
McDonough	Present
McKeon	Present
McNeil	Present
Melvin	Present
Monroe	Present
Murray	Present
Noble	Present
Nutting	Present
Payne	Present

Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present

CLERK HANSON: Mr. President, 95 delegates present, 4 absent and 1 excused.

PRESIDENT GRAYBILL: Very well. The journal may so show. Order of Business Number 1, Report of Standing Committees.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 2, Report of Select Committees.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 3, Communications.

CLERK HANSON: "Helena, Montana; March 7, 1972. Honorable Leo Graybill, Jr.; President, Montana Constitutional Convention; Capitol, Helena, Montana. Dear Mr. President: In accordance with the provisions of Section 15(2), Extraordinary Senate Bill Number 6, Chapter Extraordinary Number 1, Laws of Montana 1971, the license of Roy G. Crosby, Jr., license number 58-72, has been reinstated as of March 7th, 1972. Sincerely yours, Frank Murray, Secretary of State." "March 7, 1972. Honorable Leo Graybill, Jr.; President, Montana Constitutional Convention; Capitol, Helena, Montana. Dear Mr. President: In accordance with the provisions of Section 15(2), Extraordinary Senate Bill Number 6, Chapter Extraordinary Number 1, Laws of Montana 1971, the license of Gene A. Tuma, license number 32-72, has been reinstated as of March 7th, 1972. Sincerely yours, Frank Murray, Secretary of State."

PRESIDENT GRAYBILL: Are there other communications?

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 4, Introduction and Reference of Proposals.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 5.
Mr. Murray.

DELEGATE MURRAY: Mr. President. Due to the press of business that we have today, I move that we pass this Order of Business and the voting on the General Government Articles at this time.

PRESIDENT GRAYBILL: Mr. Murray's motion is to pass Order of Business Number 5 and take up the General Government Articles tomorrow. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.
(No response)

PRESIDENT GRAYBILL: Order of Business Number 6, Adoption.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 7, Motions and Resolutions.

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 8, Unfinished Business.
Mr. Champoux.

DELEGATE CHAMPOUX: Mr. President, fellow delegates. It is my pleasure this morning to introduce the pages for this week. Would all the pages come forward at this time. As I call your name, please stand. The first one we have is Lois Kamp; she's the niece of Mrs. Grace Bates. Lois, by the way, is from Manhattan. Leslie Ann Newman from Columbia Falls; Carl Rostad from Martinsdale, Montana; Patsy Seitz from Broadview; Marsha Murray from Kalispell—this is the daughter of our fellow delegate, Marshall Murray; Carolyn Patterson from Missoula; Brad Van Wormer from Missoula; Orville Granger from the Fort Peck Reservation; Keri Baer from Helena; Melody Jackson from Helena, Montana; and Tala Skari from Chester—she's the daugher of Carman Skari. We want to welcome you and hope you enjoy your time here. Now, one of you will come forward and address the Convention.

UNIDENTIFIED PAGE: Ladies and gentlemen of the Convention. I feel I can only respond with—like the pages before us have. And so much—it is a great honor to serve this assembly. The next 2 weeks are final weeks of the Convention. They will probably be the most chaotic, the most demanding, and the most trying upon the Convention, for now you will have to adopt the document which you have compiled. It'll be up to your discretion whether you think the document is a good enough one to submit to the public. We wish you well. I thank you. (Applause)

PRESIDENT GRAYBILL: We want to thank all of you pages, and we're sure we'll have a very pleasant week with you. And I'm sure you'll make it much easier for us to do that job that you described as difficult. Thank you very much. Your names will appear in today's journal, and you'll be given a copy that you may take home with you.

Order of Business Number 9, Special Orders.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 10, General Orders of the Day.

Mr. Murray.

DELEGATE MURRAY: Mr. President. I move that the Convention resolve itself into Committee of the Whole for consideration of business under General Orders.

PRESIDENT GRAYBILL: Very well. The motion is to resolve this Convention into Committee of the Whole to consider matters under General Orders. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.
(No response)

PRESIDENT GRAYBILL: Mr. Clerk.

(Committee of the Whole)

CLERK HANSON: March 8, 1972. The following committee proposals are now on General Orders: Bill of Rights, Education, Public Health, Local Government, General Government, Style and Drafting Number 4. Mr. President.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. By way of rearranging the calendar somewhat, I move that the Committee of the Whole take up the consideration of the Executive Article Report from Style and Drafting at this time.

CHAIRMAN GRAYBILL: Very well. It's moved that we take up the Executive Article of Style and Drafting. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: That's Booklet Number 4.

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 1 of Style and Drafting Report Number 4, it recommend the same do pass.

Mr. Chairman, Section 1—

CHAIRMAN GRAYBILL: Section 1, sub. 1—

DELEGATE SCHILTZ: —sub. 1, is—we only made style changes. I would call your attention to the word, on line 7, "department". In our comment, we noted that this has a different meaning and intent than department does in Section 7 of this same article, where they're talking about the Executive Department under reorganization.

CHAIRMAN GRAYBILL: Ladies and gentlemen of the Convention, in case you haven't got with us, we're on page 9—if you want to follow the changes of the Executive Style and Drafting Article Number 4. Page 9, Section 1, number 1, line 6. Is there discussion of Section 1, article—Section 1, sub. 1? All in favor of Section 1, sub. 1, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 1, sub. 2.
Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 1, sub. 2, of Style and Drafting Report Number 4, it recommend the same be adopted.
Mr. Chairman. There are only style changes; nothing significant.

CHAIRMAN GRAYBILL: Discussion on sub. 2? All in favor of Section 1, sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: Adopted. Sub. 3.

DELEGATE SCHILTZ: Mr. Chairman. I move when this committee does arise and report, after having had under consideration Section 1, sub. 3, Style and Drafting Report Number 4, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: We combined sub. 3 and sub. 4. Otherwise, there are no significant differences.

CHAIRMAN GRAYBILL: Sub. 3 and sub. 4 of the original article having been combined, is there any discussion of sub. 3? If not, all in favor of adopting sub. 3, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 2.
Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 2, sub. 1, Style and Drafting Report Number 4, it recommend the same be adopted.
Mr. Chairman. There we took out the words—we rearranged the sequence of executive officers, and then we will retain that same sequence throughout. They were mixed up a little bit in the various sections. Style changes only.

CHAIRMAN GRAYBILL: Is there any discussion of Section 2, sub. 1? All in favor of that section, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: It's adopted. Sub. 2, Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 2, sub. 2, Style and Drafting Report Number 4, it recommend the same be adopted.
Mr. Chairman, no changes except for style. We picked up the words used throughout, in line 26, "provided by law" instead of "as may be prescribed" et cetera. That's all.

CHAIRMAN GRAYBILL: Is there any discussion on sub. 2? All in favor thereof, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 3, sub. 1, Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 3, sub. 1, Style and Drafting Report Number 4, it recommend the same be adopted.
Mr. Chairman, only style changes; nothing unusual that should be called to the attention—

CHAIRMAN GRAYBILL: Is there any discussion of Section 3, sub. 1?
Mr. Campbell.

DELEGATE CAMPBELL: I move that we suspend the rules to reconsider the age qualifications in this section.

CHAIRMAN GRAYBILL: All right. Do you want to send some short writing to the Chair so we've got it for the thing—for the record that says that you're suspending the rules on 3, sub. 1, for the purpose of considering the age qualifications?

DELEGATE CAMPBELL: And I would move that the language of the majority report be reintroduced and accepted.

CHAIRMAN GRAYBILL: Mr. Campbell is moving that we suspend the rules on Section 3, sub. 1, which has the age qualifications involved. And he—if the rules are suspended, he will move to reconsider to put in the majority report's original age qualifications. Is there further debate?

Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman. It seems in our history, there are certain challenges to each Constitutional Convention. And in 1889, the challenge of that day was—the challenge to the Convention to allow the Legislature to someday allow women to have the right to vote. In that particular Convention, a delegate from Missoula suggested such a radical thing in his time. Wyoming had previously allowed women the right to vote and full participation within the system for 20 years prior to our Constitutional Convention in 1889. The arguments used at that Convention were the same arguments that are used today against the young people: they are not responsible; they are not intelligent; they are not qualified to hold our public offices; and they're not qualified to vote. The same fear was expressed that the people of Montana could not accept such a change. I feel that they did not measure up to the challenge of their time, the challenge of Woman Suffrage. Also, I feel that today the challenge of this Convention is a challenge of the younger generation who—unlike the women of 1889, young people already have the right to vote; they're already halfway in the system. What I'm asking you now is to reconsider, to suspend the rules, to reopen this; not to lock into our Constitution artificial age barriers which the Legislature can never, in the future, deal with or lower. I think we would make the same mistake in this Convention as they made in 1889. And as a result of their refusal to stand up to the challenge of their time, women were denied the right to vote in Montana, the Legislature could not do anything about it, for an additional 25 years after that Constitutional Convention. It was not until 1914 that women were finally allowed to have the right to vote. That was an embarrassing 45 years after our neighboring State of Wyoming had set the national example by being courageous enough to allow women to have full participation within the system. I really feel that the arguments that were used against the young people, as against the women of 1889, reflected a basic lack of confidence in the people of Montana and the democratic system, to accept a new group of responsible citizens. The Youth Constitutional Convention has pointed out—has held this—as what they felt was reasonable. I think the young people would not fear this responsibility. I think they would accept it, and I think it would be the last of the artificial age restrictions. I don't feel that we can longer maintain these artificial barriers. Governor Anderson—when he opened up this Convention, he said, "Do not be afraid to challenge the people of Montana. Do not belittle them and feel that they cannot accept some new ideas." President Graybill, when he opened this Convention, said, "Our greatest national—natural resource of the State of Montana is our youth. Let's protect them. Let's try to encourage them to stay within the state." By setting this artificial age barrier, you're certainly not giving them political equality; you're not giving them the respect that they deserve. With me today is someone who has worked her entire life fighting artificial barriers to public office—a person who is rare in that she has received the recognition in her time that few people with great ideas ever realize. She is a person who has fought the stigma that men had against women in 1889. She's the first Congresswoman for the United States of America, a woman we can be proud of—the first native Montanan ever elected to Congress—who supports this position but, because of our rules, cannot speak to it today; who has, more than any one person, sought to reduce these artificial age restrictions; who believes in the democratic system; who believes that the voters will elect the person they feel best qualified: Miss Jeannette Rankin. She's with me today. Because of our rules, unless someone requests it and it's approved, she cannot speak. She will be appearing later. I think that Montana could, as Wyoming, accept this challenge. I know it's a big idea. North Dakota, as you know, went to 21; they would not go down to 18. The average voting age in the 1970 election, for the State of Montana, was 47 years old. There is no mammoth wave of 18-year-old voters that are going to dominate any election. We have to have confidence in our people. And we hit the low point of this Convention, in my opinion, when we reversed our 59-to-31 decision to follow the majority report in the Executive Article. We reversed it because, at that time of the Convention, we had little confidence in ourselves and even less in the electorate. Since that time, we have developed backbone; we have faced issues and reform; we have given strength. Most of the mistakes, the criticisms that we've made for not making enough reform, for having the full seven offices in the Executive, are things that I think the majority of us now regret. But they are slowly congealing into the cement of Montana history. And we can't—they're all but beyond us; we can almost not change it. As you know, in the Bill of Rights we have an article on adult rights. On the Executive, if you will allow to suspend the rules to reconsider this qualification, it would be the first step in producing the type of reform, the type of recognition of our young people, that I think they deserve. I did not see any wave of joy coming from the young people that this responsibility would not be imposed upon them. I felt a great deal of dismay that we lack the trust and confidence in them and the voters of the state. With that, Mr. Chairman, I would request that we suspend the rules on this section to reconsider our decision. Thank you.

CHAIRMAN GRAYBILL: Is there other discussion on the motion to suspend the rules?

Mrs. Bugbee.

DELEGATE BUGBEE: Mr. Chairman. I would simply like to amplify what Mr. Campbell has said and say that I think that this is one of the poorest things we've done in the Constitution so far. It is simply not a constitutional matter, and it is writing into our document a rigidity that simply does not belong there. Thank you.

CHAIRMAN GRAYBILL: Mr. Berg. The journal may show your presence and you may vote.

Mr. Davis.

DELEGATE DAVIS: Mr. President, fellow delegates. I made the motion to reconsider. First, I'd made a motion to reduce the age qualifications from 30 to 25. That made the same—made you eligible to run 5 years earlier for these seven offices. I think this has been misquoted in the press, whether intentionally or unintentionally, that young people are deprived of the right to hold office. They can hold all—the offices of legislators, all the county offices, any state office except these seven. And to have some additional qualifications for office besides the 18-year-old would not seem to be unreasonable to me. I have wondered what we are writing in this, but I finally reviewed my notes last night and discovered that we were writing poetry, Mr. Burkhardt said. So I can see why it would be rather poetic to have all the 18-year-olds eligible for office. I attended the Girls' State; I've attended Boys' State; I've attended the State Key Club Convention; and none of the young people in those even voted to lower the voting age, to say nothing about the age to the highest offices. I think there's another significant question too, about talking about running this government that you've given so much power to; the complete power of taxation and these other things. If you have a team concept that we now have in our Constitution, you can have an old man like myself with the teammate, maybe, as the President of one of the units of the University System, would be very appealing to the voters. You'd have a great team going. And then, if I got killed in a car wreck the next day, I'm sure that everyone would have some misgivings about whether enough experience, and so forth, that goes into this thing. I think, by now, we should all be impressed—I hope we are—by how much experience could mean if we were fortunate enough to have it; and we haven't acquired it ourselves, I'm sure. So I would oppose anything to suspend the rules further in this Convention. There have been very many close votes. The thinking of this Convention is quite novel. A week ago, we voted 71 to 16 on the floor, of how many people we're going to have in the body. Yesterday, we voted 77 to 17, so the stability of our thinking and consistency has been not anything really to be admired. It's almost like a unanimous dissent in the Supreme Court. So I oppose any motion to suspend the rules on this or anything else.

CHAIRMAN GRAYBILL: Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman. In defense of us poets, I just want the record to be straight. We're only interested in the book of sounds, otherwise known as the Bill of Rights. We don't intend to put any poetry into the Executive Article. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. The issue is on—

Mr. Kelleher. Do you wish to speak?

DELEGATE KELLEHER: Yes.

CHAIRMAN GRAYBILL: Very well.

DELEGATE KELLEHER: Thank you. I think that my learned brothers teaming up with a teenager is as likely as Mrs. Chisholm teaming up with Mr. Wallace, as a recent suggestion has been made for a national ticket. I think the serious and only relevant matter as far as allowing the 18-year-olds to run for Governor—there's only one question that's really important. Do you have a quarter of a million dollars? That's what it costs to run for Governor in this state, and that's the only relevant matter. The young people around here were tremendously disillusioned with this Convention after we reversed ourselves. And I strongly support Mr. Campbell's motion.

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: Mr. President [Chairman]. Yesterday, I spoke to a gentleman who supposedly represented about, he claimed, about 91,000 people in the State of Montana. And he said they were rather concerned about many things that we had reconsidered in our deliberations. This 18-year-old running for Governor happened to be one of them. So I hope that we move here to reconsider and go even further than that and allow 18-year-olds to run for the office of Governor, even though we know in our own minds no 18-year-old is really going to be able to win an election in the State of Montana.

CHAIRMAN GRAYBILL: Mr. Gysler.

DELEGATE GYSLER: Mr. Chairman. Last night when I filled up with gas, a 19-year-old service station attendant asked me—he said, "Is it true that someone 18 or 19 like I am can run for the Legislature?" I said, "Yes." In no uncertain terms, he told me that he thought that this body just wasn't too sharp to do something like that. I oppose the motion to reconsider.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Well, I suppose it just depends on who you talk to or who writes to you. Now, I have a letter here. "Dear Mr. James: I support the right of all registered voters to hold public office. Respectfully, John Elliott, President, Youth Con Con." Evidently, this kid had more on the ball than the one Mr. Gysler talked to. (Laughter)

CHAIRMAN GRAYBILL: The Chair will recognize Mrs. Bowman, Mr. Brown, and Mr. Choate, who are now present and may vote. The journal may so show their attendance.

Mr. Martin, do you wish to speak?

DELEGATE MARTIN: Mr. President [Chairman]. As a member of the Executive Committee and one who advocated and urged that the age barrier be dropped, I will just reaffirm the position which I've taken on the floor and which I intend to keep. And that is that I will oppose any motion to reopen debate and discussion once we've decided. I oppose the motion.

CHAIRMAN GRAYBILL: Mr. Campbell, if you want to close, do so briefly, please.

DELEGATE CAMPBELL: That—the argument that someone will have an 18-year-old running mate is as unlikely, and would be as politically popular, as Richard Nixon dropping Spiro Agnew for Lou Rawls. And as Katie Payne said, "Who's Lou Rawls?" To the young people it means something, but politically it's just not going to happen. I would just like to say that since this reversal we did make, and we have made two decisions on it—the first one favoring the young in the Executive Report; the second decision was against them and, what I think, was the low point of the Convention. And now, what I'm asking is an opportunity for us to make our final decision—and we certainly have done it. And I would request a roll call vote.

CHAIRMAN GRAYBILL: Very well. We'll have a roll call vote. It takes 51 votes or two-thirds, whichever is less, to accomplish this. Those in favor of suspending the rules, vote Aye; those opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well. Take the vote.

Aasheim	Nay
Anderson, J.	Nay
Anderson, O.	Nay
Arbanas	Aye
Arness	Nay
Aronow	Nay
Artz	Nay
Ask	Nay
Babcock	Nay
Barnard	Nay
Bates	Nay
Belcher	Nay
Berg	Nay
Berthelson	Nay
Blaylock	Aye
Blend	Nay
Bowman	Aye
Brazier	Nay
Brown	Nay

Bugbee	Aye
Burkhardt	Aye
Cain	Aye
Campbell	Aye
Cate	Aye
Champoux	Aye
Choate	Nay
Conover	Nay
Cross	Aye
Dahood	Aye
Davis	Nay
Delaney	Nay
Driscoll	Aye
Drum	Nay
Eck	Aye
Erdmann	Nay
Eskildsen	Absent
Etchart	Nay
Felt	Nay
Foster	Nay
Furlong	Aye
Garlington	Aye
Graybill	Nay
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Aye
Harlow	Aye
Harper	Aye
Harrington	Aye
Heliker	Absent
Holland	Absent
Jacobsen	Nay
James	Aye
Johnson	Nay
Joyce	Nay
Kamhoot	Nay
Kelleher	Aye
Leuthold	Aye
Loendorf	Aye
Lorello	Aye
Mahoney	Absent
Mansfield	Nay
Martin	Nay
McCarvel	Nay
McDonough	Nay
McKeon	Aye
McNeil	Aye
Melvin	Nay
Monroe	Aye
Murray	Nay
Noble	Nay
Nutting	Nay
Payne	Nay
Pemberton	Nay
Rebal	Nay
Reichert	Aye
Robinson	Aye
Roeder	Absent
Rollins	Aye
Romney	Nay
Rygg	Nay
Scanlin	Aye
Schiltz	Aye
Siderius	Aye
Simon	Nay
Skari	Aye
Sparks	Aye
Speer	Aye
Studer	Nay
Sullivan	Aye
Swanberg	Nay
Toole	Nay
Van Buskirk	Aye
Vermillion	Aye
Wagner	Nay
Ward	Aye
Warden	Nay
Wilson	Nay
Woodmansey	Nay

CLERK HANSON: Mr. Chairman, 40 voting Aye; 55 voting No.

CHAIRMAN GRAYBILL: 55 having voted No and 40 Aye, the motion to suspend the rules fails. Is there other discussion of Section 3, sub. 1? If not, you've heard Mr. Schiltz's motion that we adopt Section 3, sub. 1. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Mr. Schiltz, sub. 2.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 3, sub. 2, of Style and Drafting Report Number 4, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Only style changes, which are self-evident.

CHAIRMAN GRAYBILL: Discussion? All in favor of sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 3.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 3, sub. 3, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman, once again, style changes.

CHAIRMAN GRAYBILL: Any discussion of sub. 3? All in favor of sub. 3, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 4, Mr. Schiltz.

DELEGATE SCHILTZ: Section—Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 4, sub. 1, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. In this and the next section, particularly this section, we've taken particular care to define the powers and duties. We thought they were a little fuzzy in the material we got from the floor, and we clearly delineated between the two. Otherwise, everything—and that's style, and everything is style.

CHAIRMAN GRAYBILL: Is there any question about Section 4, sub. 1? If not, all in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 2.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 4, sub. 2, of Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. I made the comment about clearly delineating between powers and duties and providing that powers cannot be delegated.

CHAIRMAN GRAYBILL: Any discussion? All in favor of Section 4, sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 3.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 4, sub. 3, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. These are only style changes. I have one note here I want to look at, though. If you'll look at sub. 3, we provide "the Secretary of State shall maintain official records of the Executive Department", which is transposed from the way we got it because we didn't want it to mean acts of the Executive. We didn't think that's what was intended.

CHAIRMAN GRAYBILL: Is there any discussion of Section 4, sub. 3? If not, all in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 4.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 4, sub. 4, of Style and Drafting Report Number 4, that it recommend the same be adopted.

Mr. Chairman, these are minor style changes.

CHAIRMAN GRAYBILL: Any discussion of sub. 4? All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 5.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 4, sub. 5, of Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. We combined sub. 5 with sub. 6. And this will probably be moved at some time to the Legislative Article, when we prepare the final draft. This is the legislative post-audit.

CHAIRMAN GRAYBILL: Any discussion of sub. 5? All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: Sub. 5 is adopted. Sub. 5 includes 6, is that right?

DELEGATE SCHILTZ: It includes 6 and 7.

CHAIRMAN GRAYBILL: Everyone understands that? Those next two paragraphs? That's the end of Section 4. Very well, It's adopted.

Mr. Habedank.

DELEGATE HABEDANK: I'm wondering if Style and Drafting really intends to move all of sub. 5 to the Legislative Department. It seems to me what they've taken out of 6 is the part that would be moved to the Legislative Article.

DELEGATE SCHILTZ: Well, Mr. Chairman, we're not moving it at this moment, so I don't think there's any need to debate it until we do move it.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman]. When I spoke in response to Mr. Campbell, I overlooked the appreciation of Miss Rankin being here. I wonder if we could take time out to give a rousing hand of applause to a great, dedicated public servant. And I'm very sorry that I, in my debate, overlooked that. Would that be proper, Mr. President [Chairman]?

CHAIRMAN GRAYBILL: I think it would.
(Applause)

CHAIRMAN GRAYBILL: The Convention should understand that Miss Rankin is going to address us next week, so we'll see her again. All right. Lest anyone be confused, subsection 5 of Section 4, which includes the old 6 and 7—or at least it's all been compressed—has been adopted as far as the Chair understands, and we're ready to go on to Section 5.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 5, sub. 1, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. You'll see that we made no change in this; but we did make a comment that this is a somewhat bland statement and that it does not prohibit increase or decrease in salary at any time. We thought we should call that to your attention in the comments. Otherwise, no change.

CHAIRMAN GRAYBILL: Were you talking about sub. 2?

DELEGATE SCHILTZ: I was talking about sub. 1.

CHAIRMAN GRAYBILL: All right. Section 5, sub. 1; no changes. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 2.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 5, sub. 2, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Only style changes—nothing significant to note.

CHAIRMAN GRAYBILL: Is there discussion of sub. 2—Section 5, sub. 2, on page 11? If not, all in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 6.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 6, sub. 1, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman, we only changed style in some minor places. There's nothing significant to note in the section.

CHAIRMAN GRAYBILL: Any discussion of Section 6? All in favor of Section 6, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 6, sub. 2.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 6, sub. 2, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman, this is minor style changes only.

CHAIRMAN GRAYBILL: All in favor of Section 6, sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 7.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 7 of Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. We made only style changes. We deleted the language on lines 22, 23 and 24 as something that has already been done. This section was apparently taken from the Executive Reorganization Act.

CHAIRMAN GRAYBILL: Is there any discussion of Section 7? All in favor of 6 and 7, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 8.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 8, sub. 1, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: These are minor style changes.

CHAIRMAN GRAYBILL: Any discussion of Section 8? All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: Section 8 is adopted. Section 8, 2.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 8, sub. 2, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. This, again, is minor style changes.

CHAIRMAN GRAYBILL: Any discussion of 8, sub. 2? All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Eight, sub. 3.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 8, sub. 3, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. You'll note that we took out the words "during a recess of the Legislature" and inserted in lieu thereof "is not in session". We did that again in Section—sub. 4 for the reason that during a recess, it has no real meaning and could be confusing. We thought the intent was that—when the Legislature is not in session. Otherwise, everything's style.

CHAIRMAN GRAYBILL: Any discussion of sub. 3? All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 4.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 8, sub. 4, of the Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. Except as noted, where we supplied—we took out "during recess" again, only style changes.

CHAIRMAN GRAYBILL: Any discussion of sub. 4? All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 9.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 9, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. We made no changes here.

CHAIRMAN GRAYBILL: Section 9. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: It's adopted. Section 10, sub. 1.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10, sub. 1, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. I've some notes I want to look at first. As the material that came from the floor—the material we got from the floor made it possible to read this section—subsection—that a bill could become law if the Governor did not sign and did not veto. That, of course, is not the intent. So we put in language to cure that possibility, which is surely only a style change.

CHAIRMAN GRAYBILL: Is there any question about that? Any discussion of 10, sub. 1? All in favor of 10, sub. 1, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Excuse me. Mrs. Bates, do you want to discuss that?

DELEGATE BATES: Well, I don't know, but I didn't have time to let this sink in. But it seems to me that that's inaccurate. But I'll have to—let's bypass it first.

CHAIRMAN GRAYBILL: Well, let's—Mr. Schiltz—we won't bypass it unless we move to. But let's—would you explain again what you—

DELEGATE SCHILTZ: Yes. I'll have to read it. I did this late last night. Let's see—"it shall be submitted to the Governor for his signature and shall become"—I'm reading on line 5 of page 14—and this is the way we got it from the floor—"and shall become law if he does not sign"—as it read—"if he neither approves nor vetoes the bill within 5 days"—then it goes on, "it shall become law." And we didn't think that anybody meant that, so we had it read as it reads now, that it is sent to the Governor for his signature; if he does not sign or veto the bill within 5 days after its delivery to him, if the Legislature is in session, or within 20 days if the Legislature is adjourned, then it shall become law. I don't think there's any question about the clarity of it now, and we thought there was some question about the clarity then.

CHAIRMAN GRAYBILL: I don't think it changes the sense of it, Mrs. Bates. It makes it a little clearer. Let's put the question again. Is there any further discussion on 10, sub. 1? If not, all in favor of 10, sub. 1, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Ten, sub. 2.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10, sub. 2, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. There are no changes here that need to be noted; it's purely style.

CHAIRMAN GRAYBILL: Ten, sub. 2. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Three—sub. 3.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10, sub. 3, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman, these are only style changes.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: They have the same problem here about "present and voting". Would this apply here also?

DELEGATE SCHILTZ: I couldn't hear, Mrs. Eck.

DELEGATE ECK: We have "two-thirds of the members present". And we discussed this yesterday and decided that it would be preferable to have "present and voting".

DELEGATE SCHILTZ: Well, that's substantive so far as I'm concerned.

CHAIRMAN GRAYBILL: Well, we held yesterday, Mr. Schiltz, that making it "present and voting" was not substantive and was stylistic, to make it clearer what you meant.

DELEGATE SCHILTZ: I should say that we didn't wish to take it upon ourselves to add it.

DELEGATE ECK: Mr. Chairman.

CHAIRMAN GRAYBILL: Yes.

DELEGATE ECK: I move that we add "and voting" after "present".

CHAIRMAN GRAYBILL: This is sub. 3, on line 21 on page 14. Mrs. Eck has made a motion to add the words "and voting" after the word "present", so that it's the same as we did yesterday on the Legislative Article. Is there discussion? All in favor of adding the words "and voting" after the word "present" in line 21, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: That amendment is made. Is there other discussion of sub. 3? Very well. All in favor of sub. 3 as amended, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted as amended. Now, sub. 4.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10, sub. 4, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. Only style changes.

CHAIRMAN GRAYBILL: Any discussion? All in favor of sub. 4, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 5.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10, sub. 5, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. I would only note that the committee is divided on whether or not this belongs in the Legislative Article or the Executive Article, and that will probably be resolved when we prepare the final draft. Otherwise, no change.

CHAIRMAN GRAYBILL: All those in favor of sub. 5, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: And it's adopted. Now, Section 11.

DELEGATE SCHILTZ: Mr. Chairman. I should note at this point, because it isn't noted anywhere else, that we entirely deleted the—

Section 11 on page 15 as it came from the floor for—the reason was that it's provided for in Section 6 of the Legislative Article.

CHAIRMAN GRAYBILL: All right. Does everyone understand, then, that Section 11 has been entirely deleted here because in the Legislative Article we put in a section providing for calling special sessions, which said the same thing in substance? Is that right? Said the same thing in substance?

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. It seems to me that, as the Section 11 passed the Committee of the Whole, that the first sentence—or the first clause—what we had in Section 11, which appeared on page 29 of the Executive Report—was retained, where it said that whenever the Governor considers it in the public interest, he may convene the Legislature, either house or the two houses in joint session—period. It just seems to me that that should be retained in the Executive Article, even though it is duplicated in the Legislative Article. For the purposes of clarity, anybody reading the Constitution can see that the Governor does have the power to call special sessions. And I therefore move that the sentence as it passed the Committee of the Whole be reinstated in Section 11 of the Executive Article.

CHAIRMAN GRAYBILL: Mr. Joyce, what number is that in your report? Let's see—we're on Section 11.

DELEGATE JOYCE: Page 29 of the majority report, which was identical with the minority report of the Executive Article.

CHAIRMAN GRAYBILL: Very well. Mr. Joyce has made a motion that we retain the first sentence of Section 11, which says, "Whenever the Governor considers it in the public interest, he may convene the Legislature"—that's lines 2 and 3 on page 15 of the report we're working from—on the grounds that even though it's repetitious, it should be set forth in the Executive Article. Is there further discussion?

Mr. Furlong.

DELEGATE FURLONG: Mr. Chairman. I wonder if Mr. Joyce would consider suggesting to Style and Drafting that they put that portion pertaining to the Governor in the Executive Article and the other portion pertaining to the Legislature in the Legislative Article.

DELEGATE JOYCE: That would be fine with me. It's just—Mr. Chairman, I take it he asked me a question.

CHAIRMAN GRAYBILL: I'm checking the—what we did. We did leave that sentence in. We took out the middle sentence. And we left it as the stricken part shows. Is there further discussion of that matter? Does anyone happen to know, offhand, the number of the—in the Legislative Article?

DELEGATES: Sixteen.

CHAIRMAN GRAYBILL: Page 16 in the Legislative Article.

DELEGATE SCHILTZ: Mr. Graybill?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE SCHILTZ: Page 11 of the unicameral section—and it's on page 11, starting at line 15.

CHAIRMAN GRAYBILL: Of the unicameral article?

DELEGATE SCHILTZ: Right. It says *in haec verba*, "The Legislature may be convened in special sessions by the Governor". *In haec verba*, how do you like that one?

CHAIRMAN GRAYBILL: Yes, the Legislative Article says, "The Legislature may be convened in special sessions by the Governor or at the written request of a majority of its—of the members." This one says, "Whenever the Governor considers it in the public interest, he may convene the Legislature." Mr. Joyce's motion is to retain in the Executive Article, the first sentence about the Governor. Is there further discussion?

Mr. Schiltz.

DELEGATE SCHILTZ: I would only have a problem that in one—that the two provisions aren't exactly parallel and somebody might look up one and rely on it and never get around to looking up the other one. I think stylistically there should only be one mention of this. In one case, it requires the public interest; in the other case, the Governor can do it willy-nilly. I don't like it just from a style standpoint, but I don't resist it awfully hard.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: I hate to quibble over the thing. It just seems to me if in the final styling if there is a Section 11 that says "The Legislature may be convened in special session by the Governor"—period—why, that would be fine with me. It just seems to me that it is one of the powers of the Governor and it should appear in the Executive Article.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I concur with Mr. Joyce, for two reasons. I think it belongs there because it's an executive power, and secondly, I think it spells out who is going to call the Legislature into session if the majority of the Legislature requests it. In the Legislative Article, it just says the majority of the members may call; it doesn't say who is going to implement the call. So I would move that we retain Section 11 in the Executive Article, if that motion hasn't already been made.

CHAIRMAN GRAYBILL: Well, Mr. Joyce only wanted—only made a motion to retain the first sentence. Do you want to make a motion to retain the whole thing?

DELEGATE AASHEIM: As a substitute motion, I do.

CHAIRMAN GRAYBILL: All right. Mr. Aasheim's substitute motion is to retain all of Section 11 as shown on lines 2 to 6, page 15. Is there any discussion?

Mr. Joyce, are you up?

DELEGATE JOYCE: Yes. Mr. Chairman, maybe I'm wrong; my notes indicate that the second sentence was deleted in the Committee of the Whole.

CHAIRMAN GRAYBILL: That's wrong. The middle sentence was deleted, and it's not in the book here, but the last sentence was retained—and that's—what—lines 4 to 6.

Mr. Schiltz.

DELEGATE SCHILTZ: When I indicated that I didn't resist Mr. Joyce's motion too much—but I do resist the substitute motion, because now we're putting into the Executive Article material that is entirely legislative and doesn't belong there.

CHAIRMAN GRAYBILL: All right. The issue is on Mr. Aasheim's motion to retain all of Section 11. All in favor of that, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: All right. That's defeated. Now the issue is on Mr. Joyce's motion to retain the first sentence of Section 11 about the Governor calling the—convening the Legislature. All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: That motion passes. So we've adopted that. And, Mr. Schiltz, let's now put the question on the first two sentences of Section 11.

DELEGATE SCHILTZ: And at the same time, I want to include—or renumber—we'll have to renumber as we go along.

CHAIRMAN GRAYBILL: Right.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10, sub. 11, that it recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: Well, let's—

DELEGATE SCHILTZ: Wait a minute; it's Section 11, I'm sorry.

CHAIRMAN GRAYBILL: Section 11—

DELEGATE SCHILTZ: —of Style and Drafting Report Number 4.

CHAIRMAN GRAYBILL: All in favor of adopting Section 11 as Mr. Joyce amended it and as the Chairman has moved, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: All right. It's adopted as amended. Now, we'll take former Section 11, now Section 12.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 12 of the Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. We made some style changes that are not significant. We changed the word "reinstate" to "restore", to coincide with Section 94-4720 of the *Revised Codes*. "Reinstate" is not a word used in the Codes.

CHAIRMAN GRAYBILL: All right, now. Members of the body, we're talking about lines 7 to 10 on page 15. It used to be 12, and then it went to 11, and now it's back to 12. So if you'd renumber "Pardons" as 12 and "Militia" as 13 and "Succession" as 14 in your books, we'll refer to them that way since that's the way Style and Drafting will now want them. Is there discussion of Section 12, Pardons? All in favor of that section, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 13, Militia.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 13, sub. 1, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. The—only style changes here.

CHAIRMAN GRAYBILL: All in favor of 13, sub. 1, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: Thirteen, sub. 2.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 13, sub. 2, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. Only minor change in style.

CHAIRMAN GRAYBILL: All in favor of 13, sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Now, Section 14, Succession, sub. 1.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 14, sub. 1, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. We only made one or two minor style changes.

CHAIRMAN GRAYBILL: Any discussion of 14, sub. 1? All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Fourteen, sub. 2.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 14, sub. 2, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. If you'll look on page 16, during the—at the top, we read the material as it came from the floor that there was a possibility that the Lieutenant Governor could be acting Governor during the 45 days' absence instead of becoming acting Governor after 45 days had elapsed. So we changed it so it was clear that after the Governor had been absent from the state. Otherwise, no other changes—or style changes.

CHAIRMAN GRAYBILL: Is there any discussion of Section 14, sub. 2?

Mrs. Payne.

DELEGATE PAYNE: Mr. Chairman. May I ask Mr. Schiltz a question?

DELEGATE SCHILTZ: Yes, indeed.

DELEGATE PAYNE: Does the Style and Drafting mean absent from the state, you know, bodily from the state, or do you mean absent from the office of Governor?

DELEGATE SCHILTZ: Well, the material we got from the floor is just "absent from the state.

DELEGATE PAYNE: Well that means—Mr. President [Chairman], may I ask another question?

CHAIRMAN GRAYBILL: Yes, Mrs. Payne.

DELEGATE PAYNE: Well, could he be absent from his office for 45 days and—

DELEGATE SCHILTZ: Well, not the way we got it. As it read, "He shall serve as acting Governor during the absence from the state of the Governor for any period in excess of 45 consecutive days." There's a next section that covers that sort of thing.

DELEGATE PAYNE: Oh, thank you very much.

CHAIRMAN GRAYBILL: The next sections do cover the situation of disability, Mrs. Payne, and might answer your question. Is there any further question about Section 14, sub. 2? All in favor of it, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 3.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 14, sub. 3, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman, relatively minor style changes.

CHAIRMAN GRAYBILL: Is there any discussion of Section 14, sub. 3? Very well. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 4.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 14, sub. 4, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman, only style changes.

CHAIRMAN GRAYBILL: Is there any question about 14, sub. 4? All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 14, sub. 5.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 14, sub. 5, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman. Only style changes here.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: We have the same problem there, "members present". I move that we add "and voting" after "present".

CHAIRMAN GRAYBILL: On what line?

DELEGATE ECK: On line 19.

CHAIRMAN GRAYBILL: On line 19, Mrs. Eck moves we add, after the word "members present", the words "and voting". All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

DELEGATE SCHILTZ: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I move that when this committee does arise and report, after having had under consideration Section 14, sub. 5, Style and Drafting Report Number 4, it recommend the same be adopted as amended.

CHAIRMAN GRAYBILL: All in favor of adopting it as amended, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Section 6.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 14, sub. 6, Style and Drafting Report Number

4, it recommend the same be adopted.

Mr. Chairman, a very minor change. Instead of "herein", we put "in this Constitution".

CHAIRMAN GRAYBILL: All in favor of Section 14, sub. 6, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 7.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 14, sub. 7, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman, very minor style changes.

CHAIRMAN GRAYBILL: All in favor of sub. 7, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 8.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 14, sub. 8, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman, in this case, we struck out all that business about the title, powers and duties and emoluments of that office and just said "shall be the Governor". In other words, he's either the Governor or he isn't; and we styled it that way.

CHAIRMAN GRAYBILL: All in favor of Section 14, sub. 8, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Now, renumber the next Section 15, on "Information for Governor".

Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 15, sub. 1, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman, we made some style changes which don't need to be noted particularly and added a title which wasn't in there, "Information for Governor".

CHAIRMAN GRAYBILL: Is there any discussion of Section 15, Information for Governor? All in favor of 15, sub. 1, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Sub. 2.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 15, sub. 2, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman, we made only style changes; nothing else significant.

CHAIRMAN GRAYBILL: Any discussion? All in favor of 15, sub. 2, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted. Fifteen, sub. 3.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 15, sub. 3, Style and Drafting Report Number 4, it recommend the same be adopted.

Mr. Chairman, only a minor style change.

CHAIRMAN GRAYBILL: Is there discussion? All in favor of 15, sub. 3, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: It's adopted.

Mr. Murray. Just wait a minute—Mr. Roeder.

DELEGATE ROEDER: Before we finally dispose of this, I'd like to suspend the rules and reconsider the Executive Article.

CHAIRMAN GRAYBILL: Mr. Roeder, under Rule 74, I need you to write that down and tell your reason. You may state it and then write it down, but I do need it sent to the Chair.

DELEGATE ROEDER: Well, sir, my reasons would be this: if I were to be vouchsafed such a thing, I would then seek to remove the office of Treasurer from the Constitution, in accordance with the recommendations of the Legislative Council, Report Number 25, October 1968, in which they say, "At a minimum"—underlined—"the constitutional status of State Treasurer should be eliminated."

CHAIRMAN GRAYBILL: Very well. Is there further discussion?

Mrs. Bates.

DELEGATE BATES: Mr. Chairman. Before we completely vote on this article, there's something that disturbs me here a little bit. In going over this, on Section 14, on Succession, we've added the words—

CHAIRMAN GRAYBILL: Mrs. Bates, I'll come back to you. But we have a motion before the house to suspend the rules to consider the Executive Article again.

DELEGATE BATES: Okay.

CHAIRMAN GRAYBILL: Is there debate on the motion to suspend the rules? Very well, the issue is on Mr. Roeder's motion to suspend the rules to reconsider the State Treasurer's office. It takes 51 votes or two-thirds. We'll use the voting machine but not for a recorded vote. So many as are in favor of suspending the rules, please vote Aye. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: The ballot is 50 for and 29 against. If some mathematician will tell me, I think that's two-thirds. That's not two-thirds? All right, that's not two-thirds. Fifty/seventy-ninths is not two-thirds.

Mr. Felt.

DELEGATE FELT: I have changed my vote from No to Aye.

CHAIRMAN GRAYBILL: Why don't you put the question again, Mr. Felt. Well, I think I've closed the vote, so you can't change your vote, but put the question again. Mr. Felt wanted to change his vote. I had closed the vote. I will be glad to open—I will be glad to let somebody put the motion again if you want to.

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I move that the Convention—that the Committee of the Whole reconsider its action on the Executive Article for the purpose of deleting from the Constitution the office of State Treasurer.

CHAIRMAN GRAYBILL: All right. You have to say that you want to suspend the rules, Mr. Joyce.

DELEGATE JOYCE: Didn't I say that? I move to suspend the rules for that purpose.

CHAIRMAN GRAYBILL: Let's vote again on suspending the rules. Do you want to clear the machine. Is there further discussion? Very well. We're ready to vote again. We'll use the voting machine. So many as shall be in favor of suspending the rules, vote Aye; and so many as shall be opposed to suspending the rules, vote No. The vote is now 58 to 26. The light has just struck the Chair. The rule is two-thirds or 51 percent, whichever is less. So, since we didn't get 51 last time, that lost; but this one passes. Therefore, we're now in a position to suspend the rules and consider the Executive Article in terms of the Treasurer's office. The rules are now suspended. Does Mr. Roeder or Mr. Felt or Mr. Joyce care to make a motion concerning the Treasurer's office? Since they moved to suspend, Mr. Brazier, I'm going to give them the opportunity to make their motion, and then I'll certainly come back to you.

DELEGATE JOYCE: Mr. Chairman. I move—

CHAIRMAN GRAYBILL: We have to make a motion to reconsider. You tell us what you want to reconsider.

DELEGATE JOYCE: I move to reconsider Section 1, sub. 1, of the Executive Article by deleting, on line 10, the word "Treasurer"; and I further move to amend Section 2, line 19, by deleting the word "Treasurer" and further move to amend Section 3, line 30, to delete the word "Treasurer".

CHAIRMAN GRAYBILL: I'm not sure that the Executive Article is right here. Maybe I'm wrong. Didn't we adopt some duties for these officers? Where are they? Yes, it would be on page 2, Mr. Joyce, Article—or Section 4, sub. 5. It's got the word "Treasurer" in it, if you're looking for that.

DELEGATE JOYCE: So I further move that subsection 4—Section 4, subsection 5, line 26, that the word "Treasurer" be deleted, on page 2. I further move, in Section 6, line 18, subsection 2, the word "Treasurer" be deleted.

CHAIRMAN GRAYBILL: That's on page 3, line 18.

DELEGATE JOYCE: I further move that Section 7, on line 30, the words "and Treasurer" be deleted and that the word "and" be inserted after the word "instruction" on line 29 and before the word "auditor".

CHAIRMAN GRAYBILL: Very well, Mr. Joyce has moved to reconsider portions of Sections 1, 2, 3, 4, 6 and 7, being all the—referring to "Treasurer".

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. It's just been called to my attention that I'm out of order because I didn't vote on the prevailing side. But Mr. Brazier is willing to make that same motion. I guess for the record you can substitute his.

CHAIRMAN GRAYBILL: Mr. Brazier, do you care to make that motion?

DELEGATE BRAZIER: Mr. Chairman. Having voted on the prevailing side, I now make the motion that Mr. Joyce attempted to make.

CHAIRMAN GRAYBILL: All right. Mr. Brazier has now made the motion to reconsider Section 1, 2, 3, 4, 6 and 7 as regards the reference in those sections to the word "Treasurer". Is there discussion?

Mr. Brazier.

DELEGATE BRAZIER: Just briefly, my reasoning is that I've felt a little concern. I think that some of the delegates have been unfairly castigated for the results of the Executive Article. I came here willing to cut back on the number of executive offices. At the same time, I will defend my decision to try to retain as an elected officer at least one person who has—who is on the cash flow of state funds and has a chance to preserve evidence in case of embezzlement and that sort of abuse of power. I don't feel that I got a meaningful chance to reflect, in my tally when we considered the majority report, what I really thought. I think the motion that I just made more clearly reflects my philosophy. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: As a point of information, Mr. President, did we open up this article for—like Section 2; is that opened up so that we could cut out some more elective offices?

CHAIRMAN GRAYBILL: Section—the motion for substitute—to suspend the rules was to remove an officer. Now, I think the—my notes only show to remove an officer. I think he did mention the Treasurer specifically; I don't know that he mentioned others. Did you mention just the Treasurer?

DELEGATE ROEDER: Yes, I did.

CHAIRMAN GRAYBILL: Pardon?

DELEGATE ROEDER: To suspend the rules, I mentioned only the Treasurer.

CHAIRMAN GRAYBILL: All right. Mr. Joyce, in your motion—Let's see, Mr. Felt, in your motion to suspend the rules, what did you mention?

DELEGATE FELT: I didn't mention any particular office, but I understood it related only to the Treasurer.

CHAIRMAN GRAYBILL: All right. So it's open now, Mr. Mahoney, for the Treasurer, at the moment.

DELEGATE MAHONEY: Didn't we open up the whole section, Mr. Chairman? Can we just go in and take out one word out of a section, under the rules? Or is the whole section open?

CHAIRMAN GRAYBILL: Rule 74 says: "One or more rules may be suspended for a specified purpose by the affirmative vote of two-thirds or a majority of all the delegates of the Convention." So it has to be for a specified purpose. So I think we're limited to the purpose they specified. That's why I insist they write down—and I still expect Mr. Felt and Mr. Roeder to write down their purpose. But they've now said that their purpose is "Treasurer". I'm not against entertaining another one to open for another purpose, Mr. Mahoney, but I think this one opened it for the purpose of taking out the word—the office of Treasurer.

DELEGATE MAHONEY: All that is bothering me, Mr. Chairman, is this: if we're going to open up a section, I don't think we can limit that section to only one thing. If you open the whole section, I think the whole section is either opened or it isn't opened. And this would be my—maybe now I—why, I know the Chair's position and I don't want to question it. I just think that this ruling should be made, because this is going to come up lots of times from now on if we're going into Style and Drafting to reconsideration. I think this is a problem we have to get settled this morning.

CHAIRMAN GRAYBILL: All right, Mr. Mahoney, I'll settle it and then we can challenge the Chair. "One or more rules may be suspended for a specified purpose by the affirmative vote of", et cetera. The Chair is going to rule, and the Chair has made it quite clear to everybody that's done this so far, that they must write down the purpose for which they open it. I'm going to rule that the rules are suspended only for the purpose that they announce, because that's what the other people vote on. They vote assuming that that's the purpose that it's going to be opened for. So if you want to enlarge the purpose, then you can either make another one, or the next time this comes up you may move to amend the purpose so that everybody understands what we're doing. But at this point, the Chair is going to rule that we voted to open these sections—or open the Executive Article for the specific purpose of dealing with the office of Treasurer. I think that's a definable purpose. That's what the rules say; that's what I'm going to rule. If you want to challenge the Chair, I'd be happy to—go ahead.

DELEGATE MAHONEY: I won't be prohibited from making another motion at this time to open this section up so that I can get at the Lieutenant Governor, could I?

CHAIRMAN GRAYBILL: No, you certainly may. I'll be glad to put you down on the list with Mrs. Bates and Mr. Brazier. All right, the motion of Mr. Brazier is to reconsider Sections 1, 2, 3, 4, 6 and 7 concerning the office of Treasurer. Is there further discussion? All in favor of Mr. Brazier's motion to reopen Sections 1, 2, 3, 4, 6 and 7 to consider "Treasurer", please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it. Now, the section is open. Mr. Brazier or Mr. Joyce, do you want to move to delete those words?

DELEGATE JOYCE: Mr. Chairman. I move that the Style and Drafting Report on the Executive, Number 4, be amended by deleting, in Section 1, line 10, the word "Treasurer"; and in Section 3, line 30, the word "Treasurer"; and in Section 2, line 19, the word "Treasurer"; Section 4, line 26, the word "Treasurer"; Section 6, line 18, the word "Treasurer"; Section 7, line 30, the words "and Treasurer"; and insert, on line 29, after the word "instruction" and before the word "auditor", the word "and".

CHAIRMAN GRAYBILL: Very well. Mr. Joyce has now made a motion to delete the word "Treasurer" from Sections 1, 2, 3, 4, 6 and 7. Is there discussion?

Mr. Arbanas.

DELEGATE ARBANAS: Mr. Chairman, fellow delegates. I'd like to speak in favor of the motion. I was on the Executive Committee. This was the majority report at the beginning. And when we discussed it on the floor, I kind of had the impression that maybe I had read the voters of Montana wrong. We talked for 2 or 3 minutes about it, and everyone seemed to think that the voters would not respond to that type of shortening the ballot. I was extremely surprised when I found out that probably no other item were we more criticized for. People I talked to, who certainly were not wild-eyed liberals or people, you know, willing to change government radically. We just couldn't understand how we had acted so incongruent with the facts of the Executive Department. It seems to me it's rather obvious to a lot of people that a simple ministerial job that is done in some office and cannot really be visible to the voters of Montana cannot be properly handled by a statewide vote. I think a lot of people understand that very well.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Joyce's motion to delete references to Treasurer in Sections 1, 2, 3, 4, 6 and 7 of the Executive Article.

Mr. Wilson.

DELEGATE WILSON: Mr. President. I, too, served on the Executive Committee, and there was a lot of discussion about this. I don't think that I need to go into all the argument that we had when we were discussing the minority of the

Executive Article and the majority report. Perhaps this did come under some criticisms from some quarters. I can assure you that if you took this question out to all of the people of Montana, you wouldn't get criticism for it; you would get comments in favor of it. Now, we're talking about the person that keeps the cash for you people. You've all expressed a lot of concern about your government agencies. You have, in the passing of your Revenue and Finance Committee proposal, certainly created other problems as to what your cash and cash balances will be. And they talk about this person: nobody knows him; nobody knows anything about the Treasurer. And I submit to you that the person who holds the Treasurer's office got probably one of the largest votes in the last election. There has always been an interest in the Treasurer's office and who ran for it. There again, we hear the argument that we want the people and the young people to have the right to vote. Who are you going to vote for? Do you want to remove another office that these people are going to vote for? Do I have to reinstate my policy to begin with that you're disenfranchising the people's right to vote when you remove the higher offices in the state government? And I suggest that when you look this proposition over—proposal over, that you think about the part that your Treasurer plays, along with your Auditor, in keeping the accounts and the cash flow of state government where it is visible for you, the people, to take a look at. Now, if it is the will of you people that you no longer want to have an elected official who will be responsible to you, the voters, keeping charge of your cash of the Montana state government, so be it. But I suggest that you think about this just a little bit. It is a responsible position, and I think we should have the right to vote for that person. And I resist the motion.

CHAIRMAN GRAYBILL: Mr. Lorello.

DELEGATE LORELLO: Mr. Chairman. I'd like to caution some of the delegates here who think that we're just going to deal right now with the Treasurer; we're going to get this thing out of the way and then we're going to progress. This is not the case. We voted on this thing several times. If we now eliminate the Treasurer, you can be certain that there's going to be moves on to eliminate some of the other officers. So if you're going to let this one go, be prepared to let some more go. I would like to caution you, and I'd like to resist Mr. Joyce's motion.

CHAIRMAN GRAYBILL: Mr. Roeder.

DELEGATE ROEDER: I'd like to respond to both Mr. Lorello and Mr. Wilson. As to opening other offices, I won't make any such motion to open them up, because the people who indicated to me in the last few days that they would support a motion to reconsider indicated they would do so only to consider the office of Treasurer. I would not go back on that agreement. Now, so far as the office being essential that we vote on it, I don't think that's true. The office of Treasurer is not required for modern accounting practices. Your money is going to be safe. The fact of the matter is the office is a historical relic. If you vote to keep it in the Constitution, you're voting to keep it there for sentimental reasons, the way you keep a spittoon in a law library for old times sake.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Mr. Chairman. I have to refer again to the meeting that I attended at Fort Benton a week ago. There were a number of people there from rural communities. The first question I was asked was, "Why didn't you eliminate those old, outmoded constitutional offices?" This comes from a rural group. It comes from a group that would normally, I think, support Mr. Wilson. Apparently they do not. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: Mr. Chairman. I was one of the majority of the committee that endeavored to do everything they could to eliminate these offices. But as I said on the floor a few days ago when I asked you the question, "Does this mean that we're going to reopen every article that we've gone through and decided on General Orders?" You said you didn't know. We've found the answer. Yesterday, we opened the—reopened the Legislative Article; today, the Legislative—the Executive; tomorrow will be Judiciary, and on down the line. I oppose the motion just for that reason.

CHAIRMAN GRAYBILL: Mr. Lorello, you may be next.

DELEGATE LORELLO: Mr. Chairman. I'd like to assure Mr. Roeder and some of the others who believe that this isn't going to happen, to look this way and you'll see pencils going very strongly. There's some more going to be coming, believe me.

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: Mr. President [Chairman]. I rise in support of us deleting this particular office. On a number of different occasions, I've stood before the body and mentioned that I had an opportunity to visit with a lot of people before the 2 weeks previous to the Convention, in excess of 800 people. And every person that I talked to, I asked them to identify eight people in public offices. The results of that particular survey were very, very discouraging. Less than 50 percent of the people could identify 50 percent out of eight of those public officials that I asked them to identify—everything from President Nixon to some of our legislators that are now serving in our Legislature. From that survey, I really can't see where it's very meaningful for the people of our state to go to the polls every 4 years and put into office someone who they really don't even know. They're just marking an "X" on a ballot, maybe. It's more or less like a lottery to them, and especially in the case of this particular office of Treasurer. When, you know, does that person really treasure; do they really have the job; are they really necessary? And I support deleting this particular state office in the Constitution because of the research that I have done and because of the stand that the majority of this Executive Committee took and also because I don't think that that job is necessary today. Thank you.

CHAIRMAN GRAYBILL: Mrs. Warden.

DELEGATE WARDEN: I'd just like to say that I am supporting the motion to delete the Treasurer. However, when you delete the Treasurer, it does not mean that you are eliminating the Treasurer. This is still provided for by statute, and I would assume that it would continue to be an elective office.

CHAIRMAN GRAYBILL: Mr. Harrington.

DELEGATE HARRINGTON: Mr. Chairman. I rise to oppose the motion to delete the Treasurer. I feel that this would be a harsh thing for this Convention to do at this time. Last night after we left here, the first thing I heard, as we were driving out of the lot, was that the Constitutional Convention did it again; it changed its mind again. And I think that sometimes the people are going to say, first we do it today and then we don't do it tomorrow. And I think this is going to be—I hope we don't get this type of publicity all the time. Thank you.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman. I think Delegate Harrington really touched on something here. Delegate Monroe said that he interviewed a lot of people who didn't know these officers. Well, I'm sure that everyone in the State of Montana is going to know everyone of this Constitutional Convention if we change our mind every week and take a different direction. It seems to me that we worked in the committees; we've debated this stuff thoroughly; we've gone over it time and again. Like Delegate Martin said, if we're going to start bringing everything back and start all over again, I just wonder how in the world we can expect the people to ever have any confidence in us writing a Constitution. We're trying to write one here that's going to last a hundred years. Every week, we change our minds and take a different direction. To use the phrase of Carl Davis, I think we just ought to let the tail go with the hide here and call it quits. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: Mr. President [Chairman]. I rise in opposition to the motion. We have absolutely no assurance, once this office is taken out of the Constitution, that it will remain an elective office. And I have stated right along that every time you remove an elected office and give it to the power of the Governor to appoint, you have taken democracy one step away from the people. And I thought that the purpose of this Convention was to get the government closer to the people. I therefore oppose the motion. Thank you.

CHAIRMAN GRAYBILL: Mr. Joyce, do you want to close?

DELEGATE JOYCE: Mr. Chairman. It seems to me that no useful purpose would be served by making extended argument one way or the other. All of the delegates have heard all of the arguments. And so I'll just submit it to the delegates on the record that has been made.

CHAIRMAN GRAYBILL: Very well. The issue before you is Mr. Joyce's motion to delete the word "Treasurer"—or the concept of Treasurer from Sections 1, 2, 3, 4, 6 and 7 of the Executive Article. We'll have a roll call vote. All those in favor of deleting, vote Aye; and those opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Will the clerk take the ballot.

Aasheim	Aye
Anderson, J.	Nay
Anderson, O.	Nay
Arbanas	Aye
Arness	Absent
Aronow	Nay
Artz	Nay
Ask	Nay
Babcock	Nay
Barnard	Nay
Bates	Absent
Belcher	Nay
Berg	Nay
Berthelson	Aye
Blaylock	Aye
Blend	Aye
Bowman	Aye
Brazier	Aye
Brown	Aye
Bugbee	Aye
Burkhardt	Aye
Cain	Aye
Campbell	Absent
Cate	Aye
Champoux	Aye
Choate	Aye
Conover	Aye
Cross	Nay
Dahood	Aye
Davis	Aye
Delaney	Aye
Driscoll	Nay
Drum	Nay
Eck	Aye
Erdmann	Nay
Eskildsen	Absent
Etchart	Nay
Felt	Aye
Foster	Aye
Furlong	Aye
Garlington	Aye
Graybill	Aye
Gysler	Aye
Habedank	Aye
Hanson, R.S.	Nay
Hanson, R.	Aye
Harbaugh	Aye
Harlow	Aye
Harper	Aye
Harrington	Nay
Heliker	Absent
Holland	Absent
Jacobsen	Nay
James	Aye
Johnson	Nay
Joyce	Aye
Kamhoot	Nay
Kelleher	Aye
Leuthold	Nay
Loendorf	Aye
Lorello	Nay
Mahoney	Absent
Mansfield	Nay
Martin	Nay
McCarvel	Nay
McDonough	Aye
McKeon	Nay
McNeil	Nay
Melvin	Aye
Monroe	Aye
Murray	Aye
Noble	Nay
Nutting	Nay
Payne	Aye
Pemberton	Absent
Rebal	Nay
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Aye
Romney	Aye
Rygg	Aye
Scanlin	Aye
Schiltz	Aye
Siderius	Aye
Simon	Nay
Skari	Aye
Sparks	Aye
Speer	Aye
Studer	Absent
Sullivan	Aye
Swanberg	Absent
Toole	Aye
Van Buskirk	Aye
Vermillion	Nay
Wagner	Aye
Ward	Absent
Warden	Aye
Wilson	Nay
Woodmansey	Nay

CLERK SMITH: Mr. Chairman, 56 have voted Aye, 33 have voted No.

CHAIRMAN GRAYBILL: 56 having

voted Aye and 33 having voted No, the motion to delete the Treasurer from the Executive branch—or the Executive Article is adopted.

Now, Mr. Mahoney.

DELEGATE MAHONEY: I move to suspend the rules to open up everything in regard to the Lieutenant Governor.

CHAIRMAN GRAYBILL: Mr. Mahoney has moved to suspend the rules on the Executive Article to open up the article to discuss the office of Lieutenant Governor, wherever it may appear throughout.

Mr. Mahoney.

DELEGATE MAHONEY: Mr. President [Chairman]. Here's an office that I think could be just as well handled by the Governor. We could give him an administrative aide, an additional one, and then in case of death of the Governor, either the President of the Senate or the Speaker of the House could be made the Governor, in case of death only. Now, we're only 24 hours away from any spot in the world. For the—having this there—the Governor—we had a President sign a bill in Peking that became law. Now, I think we could get along beautifully without a Lieutenant Governor. Now, this idea of running in a team is nice, but this fellow will continue to be elected by the people, and he's going to get his own ideas of operation in the final end. Or we could turn around and get dynasty set up here where the Governor picks his Lieutenant Governor candidate as he goes along, and we will have a dynasty. So this is the reason for my motion. And if I do, I will then ask it to be sent back to Style and Drafting. This can't be done on this floor—to send back to Style and Drafting with the instructions to get out the Lieutenant Governor and to put in the President of the Senate or the Speaker of the House, whichever this group feels should be next, only in case of death.

CHAIRMAN GRAYBILL: Is there discussion? Very well. The issue arises on Mr. Mahoney's motion to suspend the rules to reconsider the Executive Article concerning the Lieutenant Governor. We'll have a roll call vote. So many as shall be in favor of that, vote Aye; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Will the clerk take the ballot.

Aasheim	Nay
Anderson, J.	Aye
Anderson, O.	Nay
Arbanas	Aye
Arness	Nay
Aronow	Aye
Artz	Aye
Ask	Nay
Babcock	Nay
Barnard	Aye
Bates	Nay
Belcher	Nay
Berg	Nay
Berthelson	Nay
Blaylock	Aye
Blend	Aye
Bowman	Aye
Brazier	Nay
Brown	Aye
Bugbee	Nay
Burkhardt	Aye
Cain	Aye
Campbell	Absent
Cate	Absent
Champoux	Nay
Choate	Nay
Conover	Nay
Cross	Aye
Dahood	Nay
Davis	Absent
Delaney	Aye
Driscoll	Nay
Drum	Nay
Eck	Nay
Erdmann	Nay
Eskildsen	Absent
Etchart	Nay
Felt	Nay
Foster	Aye
Furlong	Nay
Garlington	Nay
Graybill	Nay
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Aye
Hanson, R.	Nay
Harbaugh	Aye
Harlow	Aye
Harper	Aye
Harrington	Nay
Heliker	Absent
Holland	Absent

Jacobsen	Nay
James	Nay
Johnson	Nay
Joyce	Nay
Kamhoot	Absent
Kelleher	Aye
Leuthold	Nay
Loendorf	Nay
Lorello	Absent
Mahoney	Aye
Mansfield	Aye
Martin	Nay
McCarvel	Nay
McDonough	Aye
McKeon	Nay
McNeil	Nay
Melvin	Nay
Monroe	Nay
Murray	Nay
Noble	Aye
Nutting	Aye
Payne	Aye
Pemberton	Absent
Rebal	Nay
Reichert	Nay
Robinson	Aye
Roeder	Nay
Rollins	Nay
Romney	Nay
Rygg	Nay
Scanlin	Nay
Schiltz	Nay
Siderius	Nay
Simon	Nay
Skari	Aye
Sparks	Nay
Speer	Nay
Studer	Nay
Sullivan	Nay
Swanberg	Absent
Toole	Nay
Van Buskirk	Aye
Vermillion	Nay
Wagner	Nay
Ward	Absent
Warden	Nay
Wilson	Absent
Woodmansey	Nay

CLERK SMITH: Mr. Chairman, 28 have voted Aye, 60 have voted No.

CHAIRMAN GRAYBILL: 60 voting No, 28 having voted Aye, Mr. Mahoney's motion to suspend the rules for the Lieutenant Governor fails.

Mr. Foster, will you please send me up your motions. I want those for the file.

Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, would you read my motion, please.

CHAIRMAN GRAYBILL: All right. Mr. Foster says he moves to suspend the rules for the purpose of reconsidering the office of Secretary of State in the Style and Drafting Number 4 of the Executive Article. Mr. Foster therefore wants to suspend the rules to consider the office of Secretary of State in the Executive Article.

Mr. Foster.

DELEGATE FOSTER: I think the intent of my motion is quite clear. I don't think it's necessary for me to make a long, belabored speech. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there discussion? Very well. The question arises on Mr. Foster's motion to suspend the rules so that the office of Secretary of State can be reconsidered wherever it appears in the report of the Executive Article. Do you want a roll call vote? Very well. All in favor of suspending the rules on the Secretary of State, vote Aye; all opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Will the clerk please take the ballot.

Aasheim	Aye
Anderson, J.	Nay
Anderson, O.	Nay
Arbanas	Aye
Arness	Nay
Aronow	Nay
Artz	Aye
Ask	Nay
Babcock	Nay
Barnard	Nay
Bates	Nay
Belcher	Nay
Berg	Nay
Berthelson	Nay
Blaylock	Aye
Blend	Aye
Bowman	Aye
Brazier	Nay

Brown	Aye
Bugbee	Absent
Burkhardt	Aye
Cain	Nay
Campbell	Absent
Cate	Aye
Champoux	Nay
Choate	Aye
Conover	Nay
Cross	Absent
Dahood	Absent
Davis	Absent
Delaney	Aye
Driscoll	Nay
Drum	Absent
Eck	Aye
Erdmann	Nay
Eskildsen	Absent
Etchart	Nay
Felt	Aye
Foster	Aye
Furlong	Aye
Garlington	Nay
Graybill	Nay
Gysler	Nay
Habedank	Aye
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Aye
Harlow	Nay
Harper	Nay
Harrington	Nay
Heliker	Absent
Holland	Absent
Jacobsen	Nay
James	Nay
Johnson	Nay
Joyce	Nay
Kamhoot	Absent
Kelleher	Aye
Leuthold	Nay
Loendorf	Aye
Lorello	Absent
Mahoney	Nay
Mansfield	Nay
Martin	Absent
McCarvel	Nay
McDonough	Aye
McKeon	Nay
McNeil	Nay
Melvin	Nay
Monroe	Aye
Murray	Nay
Noble	Nay
Nutting	Aye
Payne	Aye
Pemberton	Absent
Rebal	Nay
Reichert	Aye
Robinson	Aye
Roeder	Nay
Rollins	Nay
Romney	Nay
Rygg	Nay
Scanlin	Aye
Schiltz	Nay
Siderius	Nay
Simon	Nay
Skari	Absent
Sparks	Nay
Speer	Aye
Studer	Nay
Sullivan	Nay
Swanberg	Absent
Toole	Nay
Van Buskirk	Aye
Vermillion	Nay
Wagner	Nay
Ward	Absent
Warden	Nay
Wilson	Nay
Woodmansey	Nay

CLERK SMITH: Mr. Chairman, 28 have voted Aye, 56 have voted No.

CHAIRMAN GRAYBILL: 56 having voted No and only 28 Aye, Mr. Foster's motion fails.

Mr. Cate.

DELEGATE CATE: Mr. Chairman and fellow delegates. I made a great speech here the other day. My delivery wasn't too good, but I talked about the Attorney General's office and why that office really ought to be eliminated. There's a quarter of a million dollars a year being paid out to private counsel because of the conflict between the Attorney General's office and the Governor's office. The Governor of the State of Montana ought to have his own attorney. Throughout the history of Montana, he has not had his own attorney. Governor Anderson is faced with a Republican Attorney General, Robert Woodahl. Governor Anderson cannot rely upon the advice of the Attorney General, so he has to hire private counsel, not only for himself but for all of the agencies of the Executive Department. This same situation existed when Governor Babcock was Governor and Forrest Anderson was Attorney General. And I know that situation well because I worked in that office, and there was a constant vying for political advantage between the two offices. The situation existed previously when Arnold Olsen was Attorney General and Aronson was Governor. This is a situation that drastically needs correction. The President of the United States appoints his chief legal officer, the Attorney General. The Governor of Montana should be allowed to do that also, and it would result in a more efficient and effective state government. The office of Attorney General in 35 other states is appointed by the Governor. And it seems to work in those areas, and I think it can work in Montana. Now, a comment was made, after I made my plea for this last time, that the Attorney General of Montana was responsible for bringing the charges against Mr. McGaffick, or bringing them out into the open. The Legislative Auditor was the one who brought those charges out in the open. The comment was made that the Alice Creek state lands situation up at Lincoln was the responsibility—or was something that was brought out by the Attorney General. That's not true, because that was brought out by a reporter by the name of Dick Gilluly from Billings, and it wasn't until Dick Gilluly got on the subject that anything happened with it. And I don't think that the Attorney General constitutes that much of an inhibition to the Governor committing fraud that it's necessary that he remain an elective office. So I would simply urge you to look at this situation. It's a rotten mess. It ought to be cleaned up. And it can be cleaned up, and we have an opportunity here to do that. Thank you very much. I would request a roll call vote on that, too. Thank you.

CHAIRMAN GRAYBILL: Is there other discussion?

Mr. Kelleher.

DELEGATE KELLEHER: The present system does not work well, and it is expensive. It is a waste of the taxpayers' money, and I heartily support Mr. Cate's motion.

CHAIRMAN GRAYBILL: Mr. Swanberg. Okay. Very well. The question arises on Mr. Cate's motion to suspend the rules to consider the office of Attorney General as it appears throughout the Executive Article. All in favor—we'll have a roll call vote—all in favor of eliminating the—or reopening—suspending the rules to consider the Attorney General, vote Aye; and those opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Will the clerk take the ballot.

Aasheim	Nay
Anderson, J.	Nay
Anderson, O.	Nay
Arbanas	Aye
Arness	Nay
Aronow	Nay
Artz	Aye
Ask	Nay
Babcock	Nay
Barnard	Nay
Bates	Aye
Belcher	Nay
Berg	Aye
Berthelson	Nay
Blaylock	Aye
Blend	Aye
Bowman	Aye
Brazier	Nay
Brown	Aye
Bugbee	Absent
Burkhardt	Aye
Cain	Aye
Campbell	Absent
Cate	Aye
Champoux	Aye
Choate	Aye
Conover	Absent
Cross	Aye
Dahood	Absent
Davis	Absent
Delaney	Aye
Driscoll	Nay
Drum	Absent
Eck	Aye
Erdmann	Nay
Eskildsen	Absent
Etchart	Nay
Felt	Aye
Foster	Aye
Furlong	Absent
Garlington	Nay
Graybill	Nay
Gysler	Nay
Habedank	Aye
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Nay
Harlow	Nay

Harper	Aye
Harrington	Absent
Heliker	Aye
Holland	Absent
Jacobsen	Aye
James	Aye
Johnson	Nay
Joyce	Nay
Kamhoot	Nay
Kelleher	Aye
Leuthold	Nay
Loendorf	Absent
Lorello	Absent
Mahoney	Nay
Mansfield	Nay
Martin	Nay
McCarvel	Nay
McDonough	Aye
McKeon	Aye
McNeil	Nay
Melvin	Absent
Monroe	Absent
Murray	Nay
Noble	Nay
Nutting	Nay
Payne	Aye
Pemberton	Absent
Rebal	Nay
Reichert	Nay
Robinson	Nay
Roeder	Absent
Rollins	Nay
Romney	Nay
Rygg	Nay
Scanlin	Aye
Schiltz	Absent
Siderius	Aye
Simon	Nay
Skari	Aye
Sparks	Nay
Speer	Aye
Studer	Nay
Sullivan	Nay
Swanberg	Aye
Toole	Nay
Van Buskirk	Aye
Vermillion	Nay
Wagner	Nay
Ward	Nay
Warden	Nay
Wilson	Nay
Woodmansey	Nay

CLERK HANSON: Mr. Chairman, 33 delegates voting Aye, 50 voting No.

CHAIRMAN GRAYBILL: 50 having voted No and only 33 Aye, Mr. Cate's motion fails. Mrs. Bates, we're back to you.

DELEGATE BATES: Yes, Mr. President [Chairman]. In regard to the section—I think it's 14—on succession and the "members present and voting" that we added to this, I wonder if we really meant this, because it's something that we have added to the other articles. But when we consider two-thirds of this body, which is 67 voting, then if we consider two-thirds of those voting and present, that's only 44. When we talk of a successor to the Governor, or disqualifying him, I wonder if this is what we really meant.

CHAIRMAN GRAYBILL: Mrs. Bates, tell us again what section you're talking about.

DELEGATE BATES: Section 14.

CHAIRMAN GRAYBILL: Sub. what?

DELEGATE BATES: On succession. It would be under sub. 5.

CHAIRMAN GRAYBILL: Sub. 5.

DELEGATE BATES: On line 27.

CHAIRMAN GRAYBILL: On page 16? On line 27?

DELEGATE BATES: On page 16, where we inserted the words "present and voting" in going through it just a few minutes ago. And I wondered if this is what we really meant, because "present and voting" could mean only 44 of a body of a hundred actually acting on this.

CHAIRMAN GRAYBILL: The Chair—is Mr. Schiltz there?

DELEGATE BATES: In just talking to Mr. Schiltz, he said, "Well, it seems this was the motion from the floor." And he, too, questioned it.

CHAIRMAN GRAYBILL: In a moment, we'll get Mr. Schiltz—

DELEGATE BATES: Okay.

CHAIRMAN GRAYBILL: —I hope. The Chair wants to point out another problem here, and I'd like Mr. Schiltz to hear. I'll come to you, Mrs. Eck, in a minute. Mr. Schiltz, we need you. We're on Section 14—

DELEGATE SCHILTZ: You've got me.

CHAIRMAN GRAYBILL: We're on Section 14, sub. 5—

DELEGATE SCHILTZ: All right.

CHAIRMAN GRAYBILL: —where the Governor is disabled and we put in the words "present and voting", on line 19, so that it says: "If the Legislature, within 21 days after convening, determines by a two-thirds vote of its members present and voting, that the Governor is unable to discharge the duties." Mrs. Bates raises the issue of whether we mean present and voting; if that isn't too small a number. But I have another problem. If you'll look down on line 27, it says: "Unless the Legislature determines otherwise by a two-thirds vote of its members"; so we've got two different kinds of votes in the same section. Now, maybe that's what we mean, but I just want to call that to your attention. Mrs. Eck, do you see that problem too? Mrs. Bates, do you want to make it two-thirds of the members? Is that your point?

DELEGATE BATES: Yes, Mr. President [Chairman]. I think this is the—was the intent of this group, because this is a pretty serious matter.

CHAIRMAN GRAYBILL: All right. Then why don't you move to reconsider 14, sub. 5? We haven't left—as a matter of fact, I don't think you have to do that. We haven't closed up the article yet.

DELEGATE BATES: Well, I move to delete that—those two words that we inserted here, "present and voting". I think that will clear it up.

CHAIRMAN GRAYBILL: We only inserted "and voting". You move to delete the words "present and voting" on line 19; is that right?

DELEGATE BATES: I think that's where we placed it,—two-thirds voting—yes.

CHAIRMAN GRAYBILL: All right. Mrs. Bates amends Section 14, sub. 5, on line 19, by deleting the words "present and voting". The point of this is that this makes it the same as the vote taken in the second half of the section, which is by a vote of two-thirds of its members. And the issue is whether or not the condition of the Governor—whether he can serve or not—should be decided by two-thirds of the total body or two-thirds of those present and voting. Is there discussion on this?

DELEGATE BATES: I think that if we read the entire paragraph, Mr. President [Chairman], it starts out with "within 21 days after convening, determines by two-thirds of its voters present, that the Governor is unable to discharge the powers and duties of his office, then the Governor shall serve", and so forth. And then—

CHAIRMAN GRAYBILL: Then it says, thereafter when the Governor says that he's ready to resume his powers, it takes two-thirds of its members.

DELEGATE BATES: And I think that would clarify it, just leaving it in its original position. Thank you.

CHAIRMAN GRAYBILL: All right.
Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I must apologize to the Convention in that that was the intention of the Executive Committee, to make it that it would have to be two-thirds of the members. And apparently, our drafting made an error in that connection, and I would accede to the amendment offered by Delegate Bates.

CHAIRMAN GRAYBILL: Mrs. Babcock.

DELEGATE BABCOCK: Is the word "present" deleted too, Mr. Chairman?

CHAIRMAN GRAYBILL: Mrs. Bates has moved to delete both the word "present", and the words "and voting".

DELEGATE BABCOCK: All right.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: (Inaudible)

CHAIRMAN GRAYBILL: Use your mike; we have to go on the record.

DELEGATE ECK: Mr. Chairman. Could I ask a question of Mrs. Bates?

CHAIRMAN GRAYBILL: Mrs. Bates, will you yield?

DELEGATE BATES: Yes.

DELEGATE ECK: Did you, in your motion, delete the word "present"?

DELEGATE BATES: Well, I'll tell you; I was looking at it, but I just thought that was a mistake, that present and voting, because that way we could have two-thirds or two-thirds of the body when we looked at it in the second quorum. And I'm not certain, but I just wanted to question this group before we made a final decision.

DELEGATE ECK: Yes, but the motion—Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Eck and Mrs. Bates, the Chair made your motion "present and voting". Now, if you don't want that, you say so; but at the moment the issue before the body is to strike both the word "present" and the word "voting".

DELEGATE ECK: Very good.

CHAIRMAN GRAYBILL: Is that all right, Mrs. Bates? She says it's okay.
Now, let's see—we were back to Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I only want to clarify the same thing the two ladies wanted to clarify.

CHAIRMAN GRAYBILL: Is there further discussion? If not, the issue arises on Mrs. Bates' motion to delete from line 19 the words "present and voting" so that the vote required to either say that the Governor is unable to discharge or that he is able to discharge is two-thirds of the members of the Legislature. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

DELEGATES: No.

CHAIRMAN GRAYBILL: It's adopted. Now, Mr. Schiltz, will you move 14, sub. 5 again. As—I'll do it for you, Mr. Schiltz. Wait a minute.
Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President [Chairman]. Just—I'd like to ask a question of you. As we've got that now, would it be possible for a group within the Legislature to simply stay out of the chamber and thus thwart the desires of the chamber?

CHAIRMAN GRAYBILL: The way it is now, it takes a two-thirds vote of whatever the membership is—just as we just got through voting—and it took a 51 percent vote or a two-thirds vote. So, of course, it would be possible to thwart if enough stayed away. On the other hand, if you want my opinion, which I'll give you, it seems to me that if you're going to take the Governor's office away from him, you ought to make it pretty tough. Mr. Murray, just a moment. (Laughter) Mr. Murray, if you can say to me publicly what you buzzed me about a minute ago, speak up.

DELEGATE MURRAY: Yes, Mr. Chairman. To clarify this question about staying away in the Legislature, my understanding of the Legislative rules is that everybody is required to vote. You can force them to do so by having a call of the Convention, so I don't think you can thwart anything in that manner.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I agree wholeheartedly with Mr. Murray. If the Legislature had—if it were unicameral and had one house and it had a hundred members in it, it would take 67 people to accomplish this job.

CHAIRMAN GRAYBILL: Mr. Schiltz, before we get too far away, let's readopt 14, sub. 5 as amended, because we've amended it again.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 14, sub. 5, Style and Drafting Report Number 4, it recommend the same be adopted as re-amended.

CHAIRMAN GRAYBILL: Very well. So many as are in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered.
Mr. Aasheim.

DELEGATE AASHEIM: Go to page 14 and do the same—make the correction there. On Section 10, sub. 3, line 21, I move, Mr. Chairman, on line 21 to put a period—now wait a minute—delete "present and voting". It would read, then, "two-thirds of the members"—It would read, then: "If, after the receipt of a veto message, two-thirds of the members approve the bill, it shall become law."

CHAIRMAN GRAYBILL: Very well. The Chair will allow Mr. Aasheim's amendment to be considered, and it has the effect of saying that to override the Governor's veto requires an absolute two thirds, not just an absolute—not just two-thirds of those present and voting. Is there discussion?

Mr. Joyce.

DELEGATE JOYCE: I rise in opposition to the motion because it seems to me that when the Legislative Committee deferred to the Executive Committee to write the veto section, that it was agreed by both committees that it only had to be two-thirds of the members present to override a veto. And that—it seems to me that we're dealing with entirely different policy considerations here. Overriding a veto is the Legislature simply imposing its will against the Governor's wishes, and that there isn't the need for the strictness and the absoluteness to accomplish that purpose; while when we're talking about taking the Governor's office away, why, then it ought to be tougher. But I thought that it was unanimously agreed by both the Executive and the Legislative Committees, when we submitted this proposal to the floor, that it would—the veto could be overridden by two-thirds of the members present.

CHAIRMAN GRAYBILL: Mr. Mahoney.

DELEGATE MAHONEY: I might state the present Constitution says "two-thirds of the members present". And that's the present Constitution. I think it's tough enough.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman. When we amended this a few minutes ago under Style and Drafting, we added "and voting" there. And I think this is the part that should be deleted and left in its original form as coming from Style and Drafting. And I think this was our committee's action too.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman. I think when this matter was discussed yesterday, our decision was that by adding "and voting", we would make unnecessary a process of counting up how many people were present so that you know whether you have enough. I think that the present Constitution says just "present", but it infers and has been interpreted "and voting". And since we have done it with the Legislative section, I think that it's appropriate also to do it here. Thank you.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. If you add those words "and voting"—in my role as Chairman of the Style and Drafting Committee, I'll accept anything anybody sends in here, but I'm not talking from that standpoint now. If you put in "and voting", you're inviting the Legislature—or you're allowing the Legislature to say that people don't have to vote. And the rules in the Legislature when I was there, and I'm sure when Mr. Murray and Mr. Felt were there, was that you are required to vote; and that's implicit in the present Constitution. If you say "and voting", you're inviting them to say, "I can sit there and not vote and thereby defeat just what you're trying to get". So those words "and voting" shouldn't be in there at all.

CHAIRMAN GRAYBILL: Mr. Aasheim.

DELEGATE AASHEIM: I made the motion purely for the matter of clarification. I shall now withdraw and support the wording as it is.

CHAIRMAN GRAYBILL: All right. Mr. Aasheim has withdrawn his motion, and now it's back where it was.

Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. As a point of information, we did pass, did we, in the Committee of the Whole this morning, the motion by Mrs. Eck to add the words "and voting"?

CHAIRMAN GRAYBILL: Yes, we did.

DELEGATE JOYCE: I therefore move to—having voted on the prevailing side, I move to reconsider our action in that connection. And if my motion to reconsider should pass, why, I would then move to delete the words "and voting".

CHAIRMAN GRAYBILL: Just a minute. Let me think a minute. The Chair is thinking. We did not adopt—we did not rise and report, but I think you're perhaps right, that we have to—What's bothering me is that we did not vote to reconsider, in the case of Section 5 of Article XIV that Mrs. Bates did. I don't want to be fouled up here. I think to be technically correct, Mr. Joyce, I'll hold your matter in abeyance for a moment. To be technically correct, the Chair would like to ask Mrs. Bates, on Section 9—on Section 14, sub. 5, where you just took out the words "present and voting" in the Governor's illness case, would you please move to reconsider 14, sub. 5.

DELEGATE BATES: Yes, Mr. President [Chairman], I will do so.

CHAIRMAN GRAYBILL: All right. Now, she's moved to reconsider. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: Now will you move to strike the words "present and voting" out of line 19, Mrs. Bates.

DELEGATE BATES: I move to strike "members present and voting".

CHAIRMAN GRAYBILL: No, not "members", just "present and voting"—

DELEGATE BATES: "present and voting"—sorry.

CHAIRMAN GRAYBILL: Right. She now moves to strike "present and voting" out of Section 14, sub. 5. Is there discussion? Very well. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: Now I think we've done that right. I didn't want to have an error and have somebody challenge the record. Now, Mr. Joyce, if you want to make a motion to reconsider 9, sub. 3.

DELEGATE JOYCE: I move to reconsider the action of the Committee of the Whole in its consideration of Section 9, sub. 3, of the Style and Drafting report on the Executive Article, Number 4, for the reasons I've previously stated; namely, to strike the words "and voting" if the motion to reconsider does pass.

CHAIRMAN GRAYBILL: It's 9, sub. 3, Mr. Joyce.

DELEGATE JOYCE: Nine, sub 3.

CHAIRMAN GRAYBILL: Is there discussion? All in favor of Mr. Joyce's motion to reconsider 9, sub. 3, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: I beg your pardon, it is 10, sub. 3.

DELEGATE JOYCE: May the record so show.

CHAIRMAN GRAYBILL: Ten, sub. 3. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: All right, the reconsideration is allowed. Now, Mr. Joyce, do you want to make your motion?

DELEGATE JOYCE: Mr. Chairman. I move that Section 10, sub. 3, of the Style and Drafting report on the Executive Article Number 4, be amended by striking, in line 21, after the word "members", the words "and voting". So that if the amendment were to pass, subsection 3 would read: "If, after receipt of a veto message, two-thirds of the members present approve the bill, it shall become law."

CHAIRMAN GRAYBILL: Very well. Mr. Joyce's motion is to amend 10, sub. 3, by striking just the words "and voting" which we added this morning. Is there further discussion?
Mr. Aasheim.

DELEGATE AASHEIM: Mr. Chairman and members of the assembly. I think we're going to have complications here. You're going to have people sitting in their chairs and they are going to refuse to vote, and that'll require that you take a head count to get the total members present. If you have a tally on the board, there's no question about it. So I resist the motion to delete "and voting".

CHAIRMAN GRAYBILL: Is there further discussion? Very well. All in favor of Mrs. Bates' motion to strike the words "and voting", say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: All in favor of striking it, use the voting machines and vote Aye; and opposed, vote No. Have all the delegates voted?
(No response)

CHAIRMAN GRAYBILL: Any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: 55 having voted Aye, 18 voting No, it is adopted. Now, Mr. Joyce—Mr. Schiltz, would you re-move Section 3.

DELEGATE SCHILTZ: Mr. Chairman, can I re-move 14, 5 again?

CHAIRMAN GRAYBILL: Yes, let's remove both of them.

DELEGATE SCHILTZ: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10, sub. 3, Style and Drafting Report Number 4, it recommend the same be adopted as reamended.

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

(No response)

CHAIRMAN GRAYBILL: It's adopted.

DELEGATE SCHILTZ: Fourteen, sub. 5. Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 14, sub. 5, Style and Drafting Report Number 4, it recommend the same be adopted as reamended.

CHAIRMAN GRAYBILL: All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?

(No response)

CHAIRMAN GRAYBILL: Well, we're right back where we were an hour ago. Are there further motions?

Mr. Burkhardt.

DELEGATE BURKHARDT: I don't have a motion, Mr. Chairman. I wanted a point of clarification. If, as a matter of style, we discover we've used "and voting"—"present and voting"—throughout the document, are we now empowered to take the "and voting" out?

CHAIRMAN GRAYBILL: Well, Style and Drafting still has the Legislative Article back in it's lair, so I guess—

Mr. Schiltz, do you want to speak to that?

DELEGATE SCHILTZ: Yes, I would like to speak on that. We consider this to be a substantive matter and there are about three interpretations you can put on it. So, when it comes from the floor in one fashion, we assume that the committee intended it to be "present and voting" in one case, or only "present" in another case, and "members" in another case, which would mean all the members and a fraction of two-thirds of all those, which would be 67 if it's a hundred. In answer to Mr. Burkhardt, I don't think that the Style and Drafting Committee will tamper with that in any way, because we intend that—or we interpret that the intent was to send it to us as it came—as we got it.

CHAIRMAN GRAYBILL: Very well. Are there other matters?

Mr. Murray—Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman. I move that Style and Drafting Report Number 4 be rereferred to Style and Drafting Committee for incorporation of the changes and amendments made in the Committee of the Whole this day, with the privilege of sending it back to the Convention for referral to Order of Business Number 5.

CHAIRMAN GRAYBILL: Do you think you want it back, Mr. Schiltz?

DELEGATE SCHILTZ: Well, I would assume you'd want a clean copy; I don't know.

CHAIRMAN GRAYBILL: Well, we'll get a clean copy in any event. I don't care. You can do it that way, but there aren't any changes—the two things we double changed we—are right back to your language.

DELEGATE SCHILTZ: Except Section 11, on page 15.

CHAIRMAN GRAYBILL: All right. Well, let's vote on Mr. Schiltz's motion. I take it to be the sense of your motion, Mr. Schiltz, as yesterday, that if there are no changes—if you find no errors, that you may then put it on General Orders—or, put it on Order of Business Number 5. Is that correct? That's correct.

Mrs. Babcock.

DELEGATE BABCOCK: Will this make it possible for this to all be opened up again?

CHAIRMAN GRAYBILL: It can't be opened up again unless Mr. Schiltz finds an error. So we'll hope for the best, Mrs. Babcock. All in favor of Mr. Schiltz's motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: So ordered.
Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. By way of rearranging our calendar, I move that we pass consideration of all other matters before the Committee of the Whole until the next sitting of the committee.

CHAIRMAN GRAYBILL: What do you mean by that, Mr. Murray?

DELEGATE MURRAY: Well, I mean that we have other matters to take up, like Bill of Rights, and I'd like to move and finally rise and report on this part of it. And that's the purpose of my motion.

CHAIRMAN GRAYBILL: All right. All in favor of Mr. Murray's motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

DELEGATE MURRAY: Mr. Chairman. I move that the Committee of the Whole rise and finally report.

CHAIRMAN GRAYBILL: On the Executive Article? The motion is to rise and finally report on the Executive Article of the Style and Drafting Report. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: So ordered.

PRESIDENT GRAYBILL: Will the clerk please read the report of the Committee of the Whole.

CLERK HANSON: "March 8, 1972. Mr. President: We, your Committee of the Whole, having had under consideration Report Number 4 of the Committee on Style and Drafting, recommend as follows:"—

PRESIDENT GRAYBILL: Mr. Murray.

CLERK HANSON: —"that the committee rise and report. Signed: Graybill."

PRESIDENT GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Unless there's objection, Mr. President, I move we adopt the Committee of the Whole report.

PESIDENT GRAYBILL: Is there objection to not reading the entire Committee of the Whole report? The motion is to adopt the Committee of the Whole report. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.
(No response)

PRESIDENT GRAYBILL: So ordered.

DELEGATE MURRAY: Mr. President. I move that the Convention resolve itself into Committee of the Whole for consideration of business under General Orders.

PRESIDENT GRAYBILL: The motion is to resolve ourselves back into Committee of the Whole to consider matters under General Orders. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.
(No response)

PRESIDENT GRAYBILL: So ordered. It's the Chair's intention to take up one or two Bill of Rights articles before noon. That's why we're going back into Committee of the Whole.

(Committee of the Whole)

CHAIRMAN GRAYBILL: Will the clerk please read Section 12 of the Bill of Rights Article Number 8.

CLERK HANSON: "Section 12, Right to bear arms. The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of any—of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons." Mr. Chairman, Section 12.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President [Chairman]. I move that when this committee does arise and report, after having had under consideration Section 12 of Proposal 8, it recommend the same be adopted. Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President [Chairman]. On this particular section, which has had a great deal of discussion and has been the subject of a great deal of emotional debate throughout our country and here in Montana in past political races—and insofar as gun registration is concerned, we heard a great many witnesses on this particular section of the Bill of Rights. And it was very early decided among the Bill of Rights Committee members that we would leave this section as is, which is the strongest statement on the right to bear arms of any of the 50 states of the United States. We had many people who are members of the National Rifle Association, the group of the right to keep and bear arms, appear before our committee. Then, when we were holding our hearings in the Senate over here, the question was put to each one of these witnesses, "Are you satisfied with the present section of the right to keep and bear arms?" And with only one exception, every one of them said, yes; they were pefectly happy and would be very pleased if the committee would recommend this. And so we have. And so, I would urge this Convention to keep the present Section 12, the right to keep and bear arms; which is, as I say, the strongest in the United States. And I will rest at this point. Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. Mr. Berthelson, you have an amendment. May the Chair have the clerk read the amendment? Will the clerk read Mr. Berthelson's amendment?

CLERK HANSON: "Mr. Chairman. I move to amend Section 12, page 6, line 20, of the Bill of Rights Committee proposal by adding the following words after the comma following the word 'question'—quote: 'nor shall any person's firearms be registered or licensed, comma"—end quote. Signed: Berthelson."

CHAIRMAN GRAYBILL: Very well. Mr. Berthelson has proposed an amendment to Section 12 which has the effect of adding, on line 20, the phrase "nor shall any person's firearms be registered or licensed". That's in the middle of the sentence, but it's before the last clause.

Mr. Berthelson.

DELEGATE BERTHELSON: Mr. President [Chairman] and fellow delegates. I rise to speak in favor of the amendment you have just heard read. I should like to commend the Bill of Rights Committee for their work and for the very progressive and forward-looking article which they have presented to this body. I would like to thank the Bill of Rights Committee Chairman, Mr. Dahood, and Vice-Chairman, Mr. Blaylock, and the other members of that committee for the thoughtful consideration which they gave to my Delegate Proposal Number 4. Very sincerely and respectfully, I yield to their judgment that Proposal Number 4 was too long. To comply with Rule 20 of this Convention, I will state that I do hold several guns, including big-game rifles, shotguns for bird hunting and competitive practice and shooting, and I do own four older-model Winchesters which someday may become collectors' items. I should also like to tell this Convention of delegates that I have three sons, three daughters-in-law, four daughters, and four sons-in-law, each of whom I believe to be good, law-abiding citizens and each of whom owns three or more guns. I have several grandchildren whom I look forward to teaching to use guns. I state that I have been a qualified hunter safety instructor for the State of Montana since the inception of that program. Now, I should also like to state further that my father owned one or more guns that he could use. My mother owned two guns that she could use. Likewise, my grandparents owned and could use their guns. Now, beyond this generation, I cannot testify with certainty, but I would surmise that one or two more generations back my ancestors did use and own guns. Now, I'd like to submit to you, now, that we have today, here in this Convention Hall, a rare opportunity to write a right to bear arms section that can be a landmark model for other states to follow. I should like each of you to consider carefully with me this statement that I'm going to make. Gun registration or licensing is a must before any serious effort toward gun confiscation can be made. Totalitarian powers always want to know what citizens own weapons and where they may be seized. Now, to be brief, I'm going to ask you delegates to think with me now about what has happened in these countries: Czechoslovakia, Hungary, Cuba, Ireland. I submit that each of you know what has happened. Now, we have many citizens who believed that it could never happen here; but might I remind you of the millions of believers behind the Iron and Bamboo Curtains. There are those who say, "Yes, but we have the present section in our Bill of

Rights", and again this is true. But tell me, how much freer would the Czechs, Poles, Hungarians, Cubans, and so forth, be if we sent them a hundred, a thousand, or even a million copies of our present Constitution with its present section on the right to bear arms? Maybe they would be a little warmer as their leaders burned them, but certainly no freer. What is it, then, that truly differs us from these enslaved peoples throughout the world? Might I suggest that it is not only our desire to remain free, but our ability to insure that our rights asserted in the present section will never be overstepped nor infringed. Fellow delegates, I submit to you that that ability will be tremendously strengthened by adding the nine words "nor shall any person's firearms be registered or licensed". Mr. President [Chairman] and fellow delegates, I thank you.

CHAIRMAN GRAYBILL: Mr. Blaylock

DELEGATE BLAYLOCK: Mr. President [Chairman]. I resist the admendment. Since the year 1900 in our country, we have had over 770,000 people die from nonmilitary gunshot wounds in the United States. We're slaughtering each other at the rate of 18,000 a year. Last year, we had 93 policemen shot down in the United States. Ninety-six percent of the murdered policemen killed by gunfire are killed by pistols. Now, no one under our present Bill of Rights right to bear arms section have lost any arms in the State of Montana. No one proposes to take their arms. The argument that we can never—or never should—register these guns, I think we have to contemplate very seriously and go into the future. No one knows how the State of Montana, how our population may grow. Our cities get larger; our problems become more complex. And that we may very well, someday, in our state Legislature, want to give that Legislature and our Constitution the right to register at least pistols. Now, the argument is always given that if we ever register any guns—you know, we do register our automobiles; we register all kinds of things—but if we ever register guns, then they will know where the guns are and therefore they can come and take the guns. And I submit that that's a false argument. If you remember—some of you may have read it—about 5 or 6 weeks ago, there was trouble in Turkey. They thought that there might be—the regime over there thought that there might be trouble, so they thought they would search the homes in Instanbul. They used the army and they went through 216,000 homes in one 24-hour period. I submit that the same thing would happen in any Montana city. If they really want to go through our homes—if that—if we ever had our government go over like that—they will get the guns, and do you know what they'll do? They'll simply pass a decree that anyone caught with a firearm in their home or on them, they will be shot on sight, and you will not keep your guns. The argument is also used—time and time again, I've heard these people use the argument—that the Czechs lost their freedom because they didn't have their guns. Again, historically, that simply is not true. Czechoslovakia lost their freedom in 1938, not because they didn't have guns. They had one of the finest little armies in Europe, very well supplied with arms. They had tanks, they had the whole bit; but they lost their freedom to Nazi Germany because their friends, Prime Minister Daladier of France and Prime Minister Neville Chamberlain of England, sold them out. That's the way they lost their freedom, and that's why the freedom has been lost in most of all of these countries. You will not keep your freedom by having shotguns and rifles in your home. So if you're going to argue from the basis of keeping your freedom, don't use that. You keep your freedom by participating in the democratic political process such as we're doing here and always making sure that that's alive. You cannot fight tanks and all the sophisticated weaponry of modern armies with rifles and shotguns. You'll last as long as the proverbial snowball in you-know-where. It simply won't be done. Now, I just have a couple of clippings here of the kind of things that are happening in the State of Montana all the time. I cut these out of the *Billings Gazette*. Here it is: "Billings Man Shot in Bar." It says, "Patrick Holland, 23, 1619 Clark Avenue was shot in the head about 10 p.m. Sunday in Archer's Beer Depot, 1223 Grand Avenue." I won't read the whole thing. This is in another bar in Billings. "April 20, 1970. A woman was killed and two men wounded in a shooting incident about 1:29 a.m. Sunday in the Standard Bar at 1207 Minnesota Avenue." They'd been having a party. Evidently somebody got looking at the wrong person. The guy hauls out his gun, shoots down three of them. Now, Mr. Berthelson talks about the fact that he owns guns, that his wife owns guns, that his sons own guns and his daughters own guns. The last thing that I would want to do in speaking to this article is to take guns away from the people who legitimately use them. But I think that we're asking the police officers of this country and of our state to do quite a bit when we say we are going to put on the books of the State of Montana, in our

Constitution, that the Legislature can never look at that problem; they can never register these guns or license them. I think the day may come, in maybe 20 years, when we may very well want to do that very thing to protect our police officers. And I resist this amendment.

CHAIRMAN GRAYBILL: Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President [Chairman] and fellow delegates. Mr. Berthelson has talked about this registration of guns, and I wholeheartedly agree with him. I have over 50 letters and names, and so on, of people that have written me from all over the state wanting us to put these nine words in our right to bear arms article. One of the letters I have states that this extension of these nine words of our previously guaranteed rights is supported by the Montana Wildlife Federation—it's over 10,000 members; The National Rifle Association, over 6,000 members in Montana; Montana Rifle and Pistol Association; Western Montana Fish and Game Association; Montana Gun Collectors Association; Association to Keep and Bear Arms, with groups across our state; Flathead Wildlife Incorporated; and many other groups; and perhaps a quarter of a million hunters and family people here. I believe that we should put this in our Constitution as a safeguard. Denmark, at the start of the Second World War, was taken over because their guns were registered. All the Nazis had to do was go to the Clerk of the Court and get the list of names, under the point of a gun, and go to these homes and pick these guns up. The result was the Nazis moved in without a shot fired and, of course, the Danes became pawns of Hitler and his troops. I would earnestly hope that you would support putting these nine words in our Bill of Rights right to bear arms article. Thank you.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: Mr. President [Chairman]. For some reason that I've never been able to understand, this whole matter of guns is a very emotional matter across the whole State of Montana. I support the Berthelson amendment for the very reason that I couldn't be honestly supporting the voters of Cascade County who sent me here if I didn't endorse it. I have had more personal telephone calls, more lettters, more petitions, mass media messages from this one group of people in Montana than any others. Actually, I'm sure that if a count were made, it would be just as many people petitioning me for this as the group who petitioned me to vote against the right to work. I do submit that if the future need arises where we should register our guns, it's a simple matter now. We've made several methods of constitutional amendment in Montana. So I submit this would be an easy thing when the people of the State of Montana see the need for it. But in the meantime, I can't see that these nine or ten words make that much difference. I must say I don't own any guns, but I look at this from a political viewpoint. These gun buffs are very emotional. By inserting these words, you will have not a group going to the—threatening you to go to the constitutional ratification election and killing the thing. They will be going there to endorse it, to ratify it. They will get all their friends out to ratify this Constitution just to insure this protection which is so dear to their heart. So I support the Berthelson amendment. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Cross.

DELEGATE CROSS: Mr. Chairman. It looks like we have two and two here now. I think the business of these words being added, of course, is something fairly recent. Up until about 2 weeks ago, the question was posed to me time and again, both at home and after I came here, "Will you support the wording which is in the present Constitution?" And this came from some of the groups that you people have quoted. And at that time, I said, "Yes, I would; I think the present Constitution section is fine and we should keep it." Then, all of a sudden, within the last 2 weeks, we get all of this tremendous outpouring of mail asking us to add these words. I think the committee is wise in retaining the present section. I don't think that adding these words is going to add a great deal to the Constitution. I feel that we are being pressured in a way here which I do not consider the kind of pressure I like to get. I think some of the arguments which have been presented for these words are not legitimate arguments. I think anyone who reads their history very thoroughly knows that that's one argument that has been twisted out of context. As far as registering guns is concerned, there are some of us who have done this voluntarily, mainly as a protection for the weapons, so that if they're ever taken, they can be traced. I happen to be on the board of a museum in our county that has some very old guns in their collections. I went to the police department about 2 years ago and asked them about registering the guns. They told me that it was optional; we could do as we pleased.

But knowing what happens sometimes to these gun collections, if they ever were taken or lost, we would never be able to trace them. So by unanimous vote of that board of trustees, we took the serial numbers of all those guns and our police department has them. Frankly, I can't see the big uproar over these additional words. I think the committee is very wise in wanting to retain the present section, and I support them.

CHAIRMAN GRAYBILL: Mrs. Mansfield.

DELEGATE MANSFIELD: Mr. Chairman. Having these few words in the Bill of Rights would be a very glaring error. I support the majority report of the Bill of Rights. In my family, my children have a great-grandmother and a great-great-grandmother who used a gun to slaughter her chickens and turkeys. She was such—they were both such good shots they could remove their heads without using the axe. We have many guns in the family that will be passed on to my sons. Today, the men on the ranch carry the guns in the pickup for the purpose of killing predatory animals. The only danger is they may be stolen if the pickups are unlocked. The neighbor had several guns stolen, and they happened to have the numbers registered at home, and they were found in California. And it was only through this registration that they were able to return them. We have one of the finest sections on the right to bear arms in the United States, and I believe it should be retained as is. I support this majority report of the Bill of Rights. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. James. I think you were up next.

DELEGATE JAMES: Mr. Chairman and fellow delegates. As a member of the Bill of Rights Committee, I will go along and support our report. We thought this over and Chet has given you some of the material on it. We did hear all kinds of people, and they were well satisfied with this thing before an organized letter campaign started. And just about all these letters came on the same pink stationery, with the exact wording, and—with the exception of one that threatened our Constitution if we didn't go along with them. Now, I think that I'd be a hell of a member of the Bill of Rights if I gave in to threats. I think we've had threats before that this Constitution wouldn't be passed if we did something. I think it's time to stand on our feet as men and reject these threats. Now, we think of ourselves as a frontier people, perhaps a frontier state, but let me read to you what the Constitution of the frontier State of Alaska has to say. This state, as you know, is just a few miles away from Soviet Russia. "A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed." This is a collective right. Again, let me take the frontier state of Hawaii, which was in our time invaded by a foreign power—or attacked, I should say, at Pearl Harbor. "A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed." Then we have the Constitution of the State of Idaho, which is much more restrictive on the right to bear arms. "The people have the right to keep and bear arms, but the Legislature shall regulate and exercise this right by law." This is much more restrictive. I do think we have a good article here. It gives us the right. It's an individual right, not a collective right like Hawaii and Alaska have. If there's any registration in Montana, I'm sure it will come from the federal government, such as one man—one vote has. If the situation arises here, as Delegate Blaylock has said, that there's a need for registration because the crime rate has risen so, this is up to the Legislature. We have given you the individual right in the present Constitution. We will give it to you in the future Constitution. I think that's about all I have to say. I heartily support our Bill of Rights proposal and will go along with it. Thank you.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. I'm a member of the Bill of Rights Committee. I have, since the commencement of our work, reserved my personal right to speak on this subject even though I voted for the section as it appears in the proposal put out by the Bill of Rights Committee. I don't know that I've ever been personally threatened about this matter or any other, either in or out of the committee. I come from an area which is concerned greatly, apparently, from the volume of mail and the phone calls and other contacts that I have had about this matter, both here and at each occasion that I have been in the Flathead during this Convention. I don't speak on this subject from a philosophical standpoint, although I probably could. I don't speak on the subject from an emotional standpoint, although probably I am somewhat emotionally involved in trying to keep and bear arms as we propose it here. I do clearly want to state to you that I am in favor of the Berthelson amendment for one particular reason, and that is the matter of practical politics. I can't think of one single thing that we could add to our Constitution that would attract voters faster than the adoption of this particular amendment. I think that it does no harm. I think that it might do great good in the practical sense. I do not wish to mean by these comments that I will not support the committee recommendation if this amendment does not pass, but for the reasons given, I support the Berthelson amendment.

CHAIRMAN GRAYBILL: The Chair senses that we're not going to get to a final vote on this issue before noon. I see three people up. I wonder if it wouldn't be advisable for us to recess at this time.

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. I move the committee recess till the hour of 1:30 p.m. this day.

CHAIRMAN GRAYBILL: Before the Chair puts this motion, the Chair is going to ask to make two announcements. First of all, Style and Drafting will not meet during the lunch hour, but will meet at 8:00 a.m. tomorrow morning—Style and Drafting, at 8:00 a.m. Secondly, will you please—if you have not, will you please make your reservations for dinner tonight—the $5 dinner at the Colonial Club—for you and your guests, if you have not made them with the girls in the secretary's office in Mr. Toole's or my office. All those in favor of—

Mr. Champoux.

DELEGATE CHAMPOUX: May we have the Education Committee just very briefly in the committee room right after this adjournment, please?

CHAIRMAN GRAYBILL: Education Committee, briefly, after this adjournment. Very well. All in favor of adjourning till 1:30 p.m., say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Recessing—All opposed, No.

(No response)

CHAIRMAN GRAYBILL: So ordered.

(Convention recessed at 11:58 a.m.—reconvened at 1:30 p.m.)

CHAIRMAN GRAYBILL: The committee will be in order. Ladies and gentlemen of the committee, before lunch we were discussing Section 12 of the Bill of Rights Article Number VIII and we had an amendment offered by Mr. Berthelson. The sense of the amendment is to add, on line 20, page 6, at the end of the line, the words: "nor shall any person's firearms be registered or licensed." While everyone is getting settled, I might announce again that some of you have requested that we use the pages with the comment, and I certainly don't mind others doing that. It does confuse—some of us are using one and some the other, and the Chair has tried to use the others; but because of the comments, I lose my place. But I'm perfectly happy if the rest of you want to use the other page; but that's what I use and I'll try and give other references if I can. Now, we're discussing Section 12 and Mr. Berthelson's amendment which adds the phrase "nor shall any person's firearms be registered."

Mrs. Pemberton, you were up before lunch.

DELEGATE PEMBERTON: Thank you very much, Mr. Graybill. There was a reference made to mail this morning that was coming in from people you were representing in your counties, and there was page after page of mimeographed letters. I have about 25 or 30 letters asking that we give consideration to Mr. Berthelson's amendment, and all but four of them are personal letters; and that is from District 1. Thank you.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman], fellow delegates. I've been inclined and very desirous of supporting the majority position on this issue. But it is a very important issue, apparently, because of all the mail and all of the fixed opinions, as noted in the last election, and how active these people were and how concerned they are about the guns. I'm not so concerned that the state is going to license and take away their gun. Now, Mr. Berthelson, as a member of the majority, last week had a great deal of confidence in our state government and gave them authority to do all the taxation, to move the assessment to a state level, remove the state debt limit on taxation so in effect they could take away your house you had the gun in, and so forth; and so I think that that part isn't too serious, about that these same people are going to turn around and make you license your gun and be very—cause a problem. However, I spent the same time here as most the rest of you—except the officials, who I know have spent a lot of additional time, and we're very grateful for that; but I want a Constitution that we can support. And also, as kind of, I hope, a little practical politician. Now, basically, these gun people are "aginners". They're going to vote against the Constitution if you don't have any article in it; they're going to vote against it if you've just got the same article in it; but they're sure going to be trapped if you put in this amendment because to get this amendment they've got to come out and support the Constitution. Therefore, I'm going to support the amendment.

CHAIRMAN GRAYBILL: Mr. Toole.

DELEGATE TOOLE: Well, Mr. Chairman, I wonder if—I rise in support of Mr. Berthelson's amendment. I wonder if by eliminating Mr. Berthelson's amendment we are not tacitly violating Section 10, the Right of Privacy. Perhaps one of the members of the committee might wish to address himself to that matter. So far as I'm concerned: the part of the country I come from, this is a people issue; this is not a pressure group issue. And I would be very much interested to know that, to have someone comment upon whether or not we are violating Section 10 by tacitly—in our tacit refusal to include Mr. Berthelson's amendment in Section 12. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: I would like to speak very briefly, sir, concerning this amendment. I want to state, to begin with, that I am in agreement with the majority proposal but I also favor Mr. Berthelson's amendment. Now, it's been said that registration is not confiscation. If it isn't, then what is it for, really? If we're going to talk about registration in terms of stopping crimes, I'm sure the case of New York with their gun control registration act can show that this sort of thing isn't successful. Secondly, Mr. Blaylock's comments on not being able to stop tanks, planes and so forth with firearms; I think the situation in Vietnam could give him an argument that opposes that position. I think the position of this amendment is for protection, as the right to bear arms was originally, and I am in support of the amendment.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I'm not going to take much time on this. When I came to the Convention, I thought I would be very happy if we could retain the section that we have in our Constitution. Therefore, I feel that the committee should be commended. However, we have many, many letters, and now it's been stated that these are a form-letter. That may be true, but these people did put—8-cent stamp on it, they went to the trouble to send it in, so therefore I know that these people want me to vote for Mr. Berthelson's amendment. And I think this is what we should do, because there's no sense of going against the will of the people. We heard many, many times that this is a people's convention. Well, let's listen to the people a little bit, then. And this is certainly an emotional thing, I don't suppose as important as a lot of people think; but I certainly want to support it because if it's what the people want, that's what we're here for. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Well, Mr. Chairman, thank you. I think most of the arguments for this have been said. I would like to observe that if we register firearms, you're making an outlaw out of everybody that refuses to register them. And I know that this would be done, and it would remind me a great deal of the years when bootlegging was in its prime. And a crook or a dangerous man that needs a gun in his work is certainly going to have it. He's illegal to start with, and any laws against him wouldn't deter him in the least, I'm sure. I support Mr. Berthelson's amendment.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, inasmuch as I have the privilege of serving in the capacity of Chairman of the Bill of Rights Committee, I feel that I am compelled to address myself to the issue that is before the Chair. I sincerely submit that the most prominent nonissue that has been presented on Convention floor is this issue. There is no one on the Bill of Rights Committee—nor has there been a suggestion made that firearms in the State of Montana should be registered. I am opposed to the registration of firearms. I think all the members of our committee at this time are opposed to the registration of firearms. I am not prepared to state, however, with utmost clarity for the future that we may never have a situation where perhaps handguns, in order to preserve law and order in society, may not fall under some legislative directive that may compel registration. That is something for the future, but for now there isn't anyone on the Bill of Rights Committee that supports any law that would require firearms to be registered. When this matter first came before our committee, the concern was that we would amend the present protection and thus interfere with the right of the people of the State of Montana to keep and bear arms. We finally convinced all those who appeared before us that that was not true and there was no intention whatsoever to consider such an idea. And so, then, everyone was satisfied with the present protection. We explained to them, as I explain to you now, the federal Constitution, almost 200 years old, does not give you the right that you have in the State of Montana. The federal Constitution, in the Second Article of the federal Bill of Rights, provides for a collective right, when the citizens are acting as a militia, to keep and bear arms. And notwithstanding all of the movement and the argument of the issue generated throughout the country, nobody is suggesting that the federal Bill of Rights be amended. Let me remind you again that in Montana, the provision that we have had since 1889, and which we have now and which our committee suggests be retained, states as follows: "The right of any person to keep or bear arms in defense of his own home, person and property shall remain inviolate." The federal Constitution right says this: "A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed." That has been interpreted by the high courts of the federal Judiciary to mean that this is a collective right and not necessarily an individual right. So in Montana, what do we have now and what is our committee's suggestion that we retain? The broadest, most liberal concept with respect to the right to keep and bear arms that exists anywhere in any of the several states of the United States. From the debates that I've listened to, suddenly there's an issue that doesn't exist here. Registration is not an issue. We want to keep our right as it presently exists, and there is no contention anywhere for registering firearms in the State of Montana. And I submit to you that I am opposed to registration, my Vice-Chairman is opposed to registration, the members of the committee are opposed to registration, and let's not give any homage to a prominent nonissue by voting for the amendment. Because I submit to you we're maintaining the right without any concern that it ever, in the future of the State of Montana, is going to be infringed; and as a consequence, I oppose the amendment. I am going to vote against the amendment; and at the same time, I and the rest of the committee are opposed to registration. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harrington.

DELEGATE HARRINGTON: Mr. Chairman, I rise to oppose the amendment. I feel that to lock this into the Constitution would be a grave mistake by this Convention. I also hope that none of the delegates will take the 1970 campaign and the vindictiveness that was waged in that campaign against Senator Mansfield. We are not registering guns. We are not thinking about registering guns. We have, as Mr. Dahood said, one of the strongest articles in the Constitution against the registering of guns, and I feel we should oppose this amendment. Thank you.

CHAIRMAN GRAYBILL: Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman—I'm tangled up in my books here. Mr. Chairman, I rise in support of Mr. Berthelson's amendment. If this is not an issue, then why make an issue of it? As a matter of fact, I think registration is an issue. The proponents of the majority report have said as much. They said it's not an issue today, but it will be an issue sometimes in the future. I don't think the people of Montana want gun registration now or in the future. Now, I come—or came quite awhile back, 16, 17 years ago, from the State of Michigan, which is a state that does have handgun registration. And it results in so much bureaucratic form-filling-out and nonsense that most gun nuts like me didn't bother to own a handgun. Who had the handguns? You know who had the handguns—those people who had a strong enough use for them to get a registration permit, or those who had a criminal use for them and didn't need a registration permit. Now, Mrs. Cross says this issue came up pretty fast. As a matter of fact, it did. It's also true the public trust issue came up pretty fast. I was for that and I am for Mr. Berthelson's amendment, so how fast it came up is, I think, beside the point. I am for it also because I am a member of the Western Montana Fish and Game Association, which is one of the most responsible organizations around and does not take ill-considered positions on anything and is firmly in support of Mr. Berthelson's amendment. There have been no threats to me from any of my constituents. There have been some well-reasoned letters. I have responded to them by saying that I am in favor of the proposed amendment, although I do not think it is the most important issue in the world and I wish they would devote some of their energies to other more important issues, and I specified a couple. Now, it has also been said here that if we do get gun registration, particularly handgun registration, it will come from the federal government, which is certainly true. If it does, so be it. But let's not let them say to Montana, "impose it on us". And finally, as a matter of closing, I'd like to take this opportunity to agree with Mr. Murray, for once. This is a matter of practical politics. I think he's absolutely right. We'll get a lot of votes for the Constitution by this.

CHAIRMAN GRAYBILL: Mr. Rollins.

DELEGATE ROLLINS: Mr. President [Chairman], to paraphrase an Alka-Seltzer ad, I can't believe I'm hearing this. I firmly support the majority. I see no threat in their proposal to anyone owning guns. I see no portent of any attempt to register guns. I say if we act on political expedience, how do we know what's politically expedient? Perhaps it is politically expedient to go along on this. Is it politically expedient, then, to go along on everything on which we get letters? Where is this great flood of letters? I don't see them. I've had quite a few on this, but I haven't been flooded in the campaign. I had a few ask about it; they didn't object to keeping what we now have. Those who feel that the opponents of the amendment will wreck the Constitution; I think I should point out that if they do wreck this new Constitution, they have exactly the same thing in the present Constitution; what have they gained by their actions? Expediency to me is not a very palatable word. There was a man by the name of Henry David Thoreau who was thrown in jail because he acted according to his own conscience, and his friend, Ralph Waldo Emerson, came to see him and he said, "Why, Henry, what are you doing in there?" To which Henry replied, "Why, Waldo, what are you doing out there?" (Laughter) And all the time he was in prison, Henry Thoreau said, "I am the only free man in this city, because I'm the only one who is living up to my convictions." He also said, "If I am more right than my neighbors, I'm a majority of one." And that's the way in which we operate. The argument of political expediency, to me, is not a good one. I support the majority report and oppose Mr. Berthelson's amendment.

CHAIRMAN GRAYBILL: Mrs. Mansfield.

DELEGATE MANSFIELD: Mr. President [Chairman], I am just going to say a few words. As you remember the song, "Pistol Packin' Mama"—this song referred to the people in—the women especially—in Montana, and I would not like to see these nine words placed in our Constitution. At our hearings—and the letters we first received at the beginning of our hearing were handwritten, and we had many people testify to retain what was in the Constitution. And then several did appear that wanted to have these nine words placed in there, and my only question to them was, "If we left this section as is, would you vote for the Constitution?" And they said, yes, no argument. The letters continued to come in to still retain this section and then, all of a sudden, form letters seemed to come, being signed by Mr. and Mrs.; and I believe that there is something afoot. I still support the major section. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: (Inaudible)

DELEGATE RYGG: Mr. Chairman, I support the Berthelson amendment. I haven't received any threats, but I think I've seen a lot more interest in that than I did in anything in the Revenue and Finance—from our county, that is. (Laughter) I realize that probably this is legislative. I realize that probably isn't the most important thing. On the other hand, in the last couple of days, it seems to me we have done some other things which are probably legislative, and maybe to me they weren't important but to someone else there is. And I honestly believe that these nine words are very important to a great many people. I don't think they will clutter up the article, and I do support the amendment. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Mr. President [Chairman], I just want to clear up a misstatement that I think Dr. Rollins gave us a few minutes ago. He said that if these gun people don't want this in the Constitution, they're going to get it back in the old one; if they vote against this new Constitution, they would be getting the same thing back in the old Constitution. But we're talking about the amendment. It is not in the old Constitution. I just want to correct that. And I want to bring up another fact that last year a fellow from the western end of the state come over and run against Mansfield. He was the Republican nominee by the name of Wallace. He run on the right to bear arms issue only, practically only, and he had very few other issues. We also had a senator over there that run against Melcher, and to the surprise of most of the people, especially in our district, Wallace picked up more votes than Rehberg, and Mr. Rehberg put on a tough race. He worked hard, there was a lot of money spent—there was not a lot of money spent; he didn't have it. Wallace was over there with hardly any support other than the right to work—(Laughter)

CHAIRMAN GRAYBILL: I'm sure that was a Freudian slip, and not an attempt to get around the Chair. (Laughter)

DELEGATE STUDER: Okay, a little commercial doesn't hurt once in a while. (Laughter) But anyway he did not have the support of any known organization other than the right to bear arms. And when he got that many votes, I would say those people are quite serious about their voting; and if we have a chance now, by this addition of these nine words, of getting their vote, I think we ought to do it because I'm quite sure that we will alienate this vote if we don't. I don't think it's very important that we have these nine votes—nine words in here, but I do think we should have the votes, and for that reason I support Mr. Berthelson.

CHAIRMAN GRAYBILL: Mr. McNeil.

DELEGATE McNEIL: Mr. Chairman, in—generally I agree with the committee. They have a very good, strong section. However, it will be better with the Berthelson amendment. Delegate Blaylock referred to some 700,000 people who've died from gunshot wounds, and an alarming number of policemen in recent history have been shot down. This is an emotional issue, and I ask that you strongly consider who shot those policemen. Would they comply with a licensing or registration law? Of course not. Delegate Blaylock and Delegate Dahood both referred to some date in the future when we may need licensing and registration. This ignores the fact that only honest, law-abiding citizens will comply with licensing and registration. The perfect example of this is New York City; they've had the Sullivan Law for years and have as high a crime rate as anywhere in the country. I submit that the net result from licensing and registration would simply be to raise the premium that the Mafia would have to pay for an unregistered gun. To the citizens of Montana, having a constitutional guarantee against licensing and registration is far more important than a constitutional right to know or right to participate or right to privacy. We're talking about the real heart of what is important to Montanans. In addition, I think it would be very nice to have all the gun nuts, and I number myself among them, supporting our Constitution. Delegate Dahood referred to this as a nonissue. I agree. It wouldn't change our Montana law one bit to put this amendment in. It wouldn't change it one bit, but what would it do? It would require that at some time in the future that anyone wants to put licensing and registration as part of the law of Montana, that they'd have to do it by a vote of the people by a constitutional amendment. I submit that's where it belongs and strongly support the Berthelson amendment.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President [Chairman], I don't know what I could add to what has already been said here, but—(Laughter)

CHAIRMAN GRAYBILL: Mr. Wilson, is that an invitation to stop, or—(Laughter)

DELEGATE WILSON: I hope that you don't interpret it that way, Mr. President [Chairman]. (Laughter)

CHAIRMAN GRAYBILL: Okay.

DELEGATE WILSON: But, I have many letters and telegrams in my desk and drawer. In fact, it's practically full of them. And they represent people from my district, a lot of them, and if I remain silent on this issue they would certainly question why I did so. I support Mr. Berthelson's amendment. I think that this thing does have a lot of meaning. It has a lot of meaning to these people that wrote these letters. There is not one of these letters in my desk that says that they will not support the Constitution if you do not put this in. They are merely expressing a wish that you will do this. They want it done. They want this additional protection that would come from having it written into the Constitution. As my good friend across the aisle has said, it will require then that the people take a vote on this if they want their guns registered; and this in effect is what these people who sent these letters to us are asking. They're asking this consideration of this body. Thank you, Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President [Chairman], fellow delegates. There is one thing to be added to this argument why these nine words should be put in our right to bear arms article. There is a movement on foot nationally to register all guns in the United States. Now, when our national Constitution was written, the states were given all rights not prohibited by this national Constitution. Now, if this movement to register arms comes even close to being an amendment in the national Bill of Rights, our already having same in our Constitution would prevent, for a time anyway, the registration of firearms in the United States. Now, if we put this amendment in our article, I am sure that other states will follow suit and copy this, the thing that we're doing here. We need this in the Constitution, and now.

CHAIRMAN GRAYBILL: Mr. Conover.

DELEGATE CONOVER: Mr. Chairman, will Mr. Dahood yield to a question?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: Mr. Chairman, I yield.

DELEGATE CONOVER: Mr. Dahood, after hearing all of these different comments for and against, to me, actually, I can't see where it would do the—hurt the article or the section one bit, but I'm going to ask you one question. Isn't it true today that if you buy a gun, even in the State of Montana, that you have to fill out three or four different forms and it's registered within the store that you buy it?

DELEGATE DAHOOD: I think that's probably correct, Mr. Conover.

DELEGATE CONOVER: Mr. Chairman, will Mr. Dahood yield to another question?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE CONOVER: Well, in that event, if we put this in the Constitution, these five—nine words, if the federal government at any time requests that all guns be registered, does that override any state?

DELEGATE DAHOOD: Mr. Conover, I wish I could answer it yes or no. I cannot, but I will try and answer your question. I think there'd be a serious question as to what type of traffic we're talking about with respect to firearms. If it's solely a matter within the State of Montana, I would not think that the federal area would have jurisdiction. On the other hand, they could contend that the manufacturer of firearms is within the stream of interstate commerce and as a consequence would have jurisdiction in that fashion. So with respect to registration, I should think that that is not a consideration that quite has the validity that some of the delegates may think it has, simply because I think if someone wanted to have a list of the firearms that exist, that wouldn't be too much trouble. I should think the National Rifle Association has a subscription list for their magazine that's probably long and extensive. I would imagine that anyone on that subscription list probably has a firearm. But in answer to your question, I think it would depend on various circumstances as to whether or not a federal registration act would apply to Montana. It would depend on the circumstances I've indicated.

DELEGATE CONOVER: Thank you, Mr. Dahood.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Conover.

DELEGATE CONOVER: Well, in listening to all your arguments, I must say that I am one of them too, probably, because I am a great lover of guns. It must come down to one point. It's going to take money out of your pocket if you have to register them. And how much it will mean to each one of these individuals, I wouldn't know. Maybe a hundred dollars, $200, $500; so I think this is the purpose that you want to add these nine words. I think, let's be honest about it.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, I want to read this proposed section to which the amendment is to be appended: "Right to bear arms. The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons." That is the background for this amendment which reads, "nor shall any person's firearms be registered or licensed". We all know that we have a backstop for this right to bear arms in the federal Constitution. There is no suggestion of registration or licensing in the committee's proposal—none whatsoever. It is a fear which has been engendered in the people of Montana's minds over the past several years, and it is widespread. It is so widespread that a person who opposes it might as well paint a big target on his back and run for the mountains and find a hole and run in the hole and pull the hole in after him. If he wants to avoid it, he'd better paint himself sky blue and run along the horizon so nobody can find him. Or, we can have a situation where we have such concern for our budding Constitution, it becomes so sacrosanct that we must embrace it—or embrace this amendment, whether we like it or not, whether it is pertinent or not; and I suggest it is not pertinent. Now, I think this is a matter that is legislative in scope. I don't think it's constitutional law. I'm not in favor of putting it into the Constitution. If I were a Legislator, I would not be in favor of putting it into the statutes of the State of Montana, because I don't believe in registration of guns. I have guns, several of them. I've used them all my life. But there are some other considerations, too. All of the mail that I have received—almost entirely being—on this subject—almost entirely being mimeographed form or material of that type—has been insisting that this be placed in the Constitution. I don't think that there—I've received more than 40, 50 such messages, but they've all been the same. Nobody has suggested that we do not keep it in the Constitution—place this in the Constitution as an amendment. The people who are in favor of placing this in the Constitution as an amendment to the majority report are very much agitated about it, and they are working tooth and toenail. The people who are against it are complacent; they take no part of it. They figure we'll all do our duty as we see it. Now, from my remarks I'm quite certain that you realize that I am not in favor of putting this amendment in the Constitution. However, in November of 1970, the people of Ravalli County took a plebiscite on me on this very question, and they retired me from the Legislature on that—because of this situation. Now I am placed in the diabolical situation of whether I should support my conscience or my constituents. (Laughter) It is a hell of a predicament. (Laughter)

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: I think the name of the game here right now, and I'm not sure I have all that much to add, is that everybody get on the record on this subject, and I'm going to get on the record on this subject. I have watched and listened to and looked at almost every kind of weapon that you could name, from three-tenths of a millimeter up to a hundred and fifty-five millimeters. I'm about half deaf in my left ear from standing next to that lanyard on that big one. And I suspect—although I don't claim to be more expert than anybody, I doubt that there's anybody in this room that knows more about guns than I know. I can take them apart in the dark, and I have. I can find first position, second position and third position stoppages and go immediately to the source. And with all that knowledge, I hate them. They make noise. There's only one thing you can do with them and that's shoot them; and there's only one thing you can do when you shoot them and that's hurt somebody or something. I have an intense hate of the things, but I will say this: I don't own one; my grandfather didn't own one; my father didn't own one; and my kids don't own one, and that's possibly because of my influence. But if I did own one, I would have no hesitancy in going downtown and registering the damned thing. (Laughter and applause)

CHAIRMAN GRAYBILL: Please don't demonstrate. We laugh, but we don't demonstrate. (Laughter)

Okay, I think Mr. Blaylock was up next, Mr. Artz.

DELEGATE BLAYLOCK: Mr. President [Chairman], just a few remarks to maybe clarify some of the points that have been made by the supporters of the amendment. First of all, on this matter of the State of New York, I've heard that quoted to me an awful lot, so I finally wrote to the Police Commissioner of the City of New York to ask him what he felt about the gun control law in that city. And I received a reply from the Deputy Commissioner of Licenses, a man by the name of Lewis Stutsman, and he says this: "Your communication concerning gun control has been referred to the undersigned for reply. The provisions of the penal law of the State of New York regulating the possession of firearms is an essential factor in our fight against crime. Our experience has revealed that in most instances firearms used in the commission of crimes in this state originally were purchased in some other jurisdiction and thereafter illegally transported to this state. It is our belief that if there were more rigid controls in other states of the possession and sale of firearms, that the crime situation would be improved." Now, I would also like to show the delegation this telegram—500 names on it from Billings, Montana, to the Bill of Rights Committee. This was addressed to Chairman Wade Dahood. It's from such people as the National Rifle Association, the National Association to Keep and Bear Arms. This is when we were holding hearings on this. They were all asking that we leave this part of our Constitution just as it is. It was only afterwards, about like 2 weeks ago, like Mrs. Cross said, that we began to get all of this lobbying to change this section. Also, in regard to this business of threats. This was addressed to Mrs. Cross, and she just passed it to me. This is at the bottom. It says: "P.S. As a delegate it would be readily apparent: with no change in Section 13, why should we support a new Constitution?" I count that as a threat—we are going to go against it if you don't do what we want. Also, in regard to—there was a remark made insofar as the country of Denmark by somebody in here, and it was because the Nazis knew where the guns were that they overran Denmark in World War II. Denmark lasted exactly 4 hours, and it wasn't because they knew where the shotguns were. I would like to reiterate that we have one of the very strongest statements on the right to keep and bear arms of any state in the Union. I don't—I think that to add this language does make a change. I think we're tying the hands of future state legislatures when this problem may become more severe some time in the future. And we have—I've heard this said over and over again in this chamber by this body—we'll leave things to the state Legislature. All right, this is a problem that may someday have to be taken up by them, and I think we should leave it to them in case that they do want to do this. Now, insofar as the argument that has been made, and I shall close with this, about the business we're going to pick up votes for this Constitution if we'll just put this in. Now, I heard when we organized this Constitutional Convention back in November, there were a lot of good idealists in here, and there was a lot of things being said about the dirty old politicians who have been over here in the state Legislature. I never did join in that thing, but those were the statements that were made; and that we didn't want caucuses and we didn't want this and we wanted to be open and let's not act like politicians. All right, we're here as a Constitutional Convention and we are writing a Constitution for maybe the next 80 years. Now, are we going to bow to some pressure to change this when maybe in our heart we really don't believe it? Now, if you really don't—if you really do believe that these words don't make any difference and that we'll put this in that they can never be registered or any licensing and you think that's the right thing, go ahead and vote for it. But if you don't believe that way, then I suggest that you do not act like the proverbial politicians and vote just because of pressure. Vote what you really think is right—not on whether this thing is going to be adopted, whether we're going to pick up some support—because I would like to point out that while Mike Mansfield did have some trouble in the last election, he did win and he still won big. There's a silent majority here that's never been heard from. And I think that we have the strongest section of any state; let's leave it alone.

CHAIRMAN GRAYBILL: Mr. Artz is next.

DELEGATE ARTZ: Mr. Chairman, fellow delegates, a few comments only. Number one, the registration will not necessarily stop criminal element. They will merely steal their guns and not register them. You are just going to create a hardship on honest people. I agree with Delegate Erdmann. I've had the same pressure from Cascade County. I would certainly appreciate it if you would support Delegate Berthelson's amendment, because I would hate to take a risk of being shot at when I go back to Cascade County. (Laughter) I would also like to eliminate a chance—or to provide a chance for getting more votes for this Constitution. Maybe I am a dirty old politician, but I'd hate to work over here as hard as I have and, with the elimination of nine words, lose the Constitution. I maintain that if Alaska and Hawaii don't like gun registration, that's fine. The people of Montana like it; they should have it. I've also heard quite a few comments around here about whether it's constitutional or legislative. Well, I found this out: if you're for something, it's constitutional; and if you're against it, it's legislative. Now, technically all of the Revenue and Finance was legislative material. Nine more words certainly should be allowed, considering the number of legislative words we've put in this Constitution up to this point. A point has been made that there was a sudden avalanche of these communications about this. I think possibly it could have been an editorial in the March-April 1972 issue of the *Handloader* magazine that probably give these people a hope that we could accomplish something if we got it in the Montana Constitution. Now, in the comments some of the reasons for not putting this in were stated as follows: "The committee notes that the statutory efforts to regulate the possession of firearms have been at the federal level and are, therefore, not subject to state constitutional provisions." In this *Handloader's* magazine for March-April 1972, the editorial, and I'm not going to read all of it, just a little, says—quote—"A significant U.S. Supreme Court decision, one which could have a far-reaching effect upon present and future federal firearms laws and could preclude a federal gun registration or licensing program was handed down shortly before the close of the 1971 Session. The decision struck down the section of the Gun Control Act of 1968 which prohibits convicted felons from possessing firearms, one of the few items in the Gun Control Act of '68 which most sportsmen favored. The case in which the Supreme Court made its decision involved one Dennis Bass of Bronx, New York, who had been convicted on two charges of possessing firearms after having been previously convicted of a felony. The key words were this; this is the crux of the matter. If the Supreme Court will not allow Congress to write laws prohibiting criminal ownership of firearms unless those firearms are directly involved in interstate commerce"—I quote, "interstate commerce"—"then it follows that Congress may not write laws denying firearms ownership to anyone. All of the proposed federal gun registration and/or licensing laws would prohibit anyone's owning a gun without having met the federal requirements. Yet the Supreme Court's Bass decision says that Congress may not take such a prohibition unless the gun is involved in interstate commerce, and without the authority to prohibit unregistered or unlicensed possession of a firearm, Congress can't write a registration or a licensing law"—unquote. Therefore it is up to the states, and I maintain that Montana should put these nine words in. I heartily support Delegate Berthelson's amendment. Thank you.

CHAIRMAN GRAYBILL: Mr. Harbaugh is next.

DELEGATE HARBAUGH: Mr. Chairman, once there was a fellow who had a dog. It was a particular kind of a dog, a very wonderful dog. He could run like the wind. This dog had a tremendous nose; he could trail almost anything. He was a great fighter, but he had one weakness. He was afraid of rabbits. (Laughter) He was what you'd call a scared-rabbit dog. I don't think I'd want to own a scared-rabbit dog. I don't think the people of Montana want a scared-rabbit Convention. It seems to me this is what the issue is when we're talking about putting frosting on the cake. I think that we ought to get on with the business of this Convention. I wouldn't change my mind on this issue in spite of all of the conversation that's taken place here. My mind was made up on this issue before we began. I wouldn't change my mind if all the people in Montana were out here beating on the Capitol door. I say, "Let's vote this amendment down; let's get on with the business of this Convention."

CHAIRMAN GRAYBILL: Mr. Rollins, I think you were next.

DELEGATE ROLLINS: We've heard about these nine little words. Here are nine words. Came from a poem—"Just for a handful of silver he sold us." This poem was a nasty, mean, unwarranted poem aimed at one of our great men, Daniel Webster, because he spoke his conscience in the 7th of March speech in 1850. Mr. Romney said he was in a hell of a predicament. The predicament that I fear is that if I don't vote my conscience—and with my ugly mug, I can't stand to shave more than one face in a day. I don't worry so much about what the people may say. They perhaps exercised poor judgment in electing me, but I've had a number of them say, "Now that you're elected, go there and write the Constitution." And in order to do that, you have to use your own judgment; you have to use your own convictions. And that's what I hope to do. I feel that those nine little words—oh, they don't mean so much; but there was another song—"Three little words, eight little letters—I love you." Man, what a trap that's been. (Laughter) Words have meant things, and those words mean something. The majority report without those words is a very strong protection to those who want to have the right to bear arms. I'm like Mr. Schiltz. I don't own a gun; I wouldn't have one. I have known personally five people who have been killed in gun accidents. I'm afraid of the things, but I don't chastise those who love guns; and I think perhaps I can understand it. I'm that way with books. But I feel that going those extra nine words is not necessary. You have a very strong article the way it is. I hope that the people will support it. Beyond that, all I can do is vote the way I feel, which is in favor of the majority report.

CHAIRMAN GRAYBILL: Mr. Gysler, you were next.

DELEGATE GYSLER: Mr. Chairman, I rise to support the Berthelson amendment. I sat in this chamber on the day that the Bill of Rights Committee had their public hearing, and I'm not going to condemn the committee at all for limiting the number—the time that people had to speak on this, but I do know that there were—it was after this time when there was considerable opposition to leaving the—this section as it is that the organized stuff started coming. On that day I was lobbied by—to add something to this by the father of Lones Wigger, Jr., who in the Olympics in Japan, I believe in 1964, was a gold medal winner in rifle competition. I can't quite see some of the arguments. They say, "Well, now, this isn't going to happen. Do you know anybody that's going to be doing this?" And then I just checked three fast ones. Do you know anybody around that says we shouldn't have freedom of religion in the State of Montana? But we have a Section 5 passed that way. Do you know anybody, any organized thing going on that would prevent us from having free and open elections? We have a section, a proposed Section 13 that way. Can you imagine somebody in this country at this time in the history of our country to be deprived of life, liberty and property without due process of law? I can't see where any of these things would happen in this country of ours, but yet we still maintain these things in the Bill of Rights. I think the addition of these few words just strengthens the article a little, and this is one of those places where I think if—because this has been historically the position that people of the State of Montana have thought of with the section we have now, that also they can't register them, I think that by—guns—I think that by adding these words in there and putting down in black and white what most of the people have always thought would be there, and then if somebody in some foreseen future—unforeseen future day may want to register them, then it goes back to the people and the people can decide. Thank you.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. President [Chairman], I will be brief. I agree with Mr. Toole; I agree with Mr. Gysler. I have received threats. I feel the majority proposal is good with—the Berthelson amendment is better. And I will vote for it, not because of the threats, but in spite of it.

CHAIRMAN GRAYBILL: Mrs. Bates.

DELEGATE BATES: Mr. Chairman, my conscience doesn't tell me to go one way or the other on this; and I'm not like Romney that I have a feeling for my constituents, because I have some pro and con. I feel this is statutory matter and that the federal government will preempt if they at some time decide to do so. I also have some strong family ties of shooting relatives who are strong gun clubbers, and therefore I will abstain from voting on this amendment. Thank you.

CHAIRMAN GRAYBILL: Mr. Harlow.

DELEGATE HARLOW: I know I am looked upon with disgust because I rise up at this particular time, but I've listened to all of these arguments and I am reminded of one statement made in our history which said, "millions for defense, but not one cent for tribute." And it looks as though this Convention is now subject to tribute. And where can any of you folks who are so concerned about these nine words being so essential—does it say anywhere in the Constitution or anyplace else that you will be deprived of your guns? The gentleman who is so proud—and I am proud, too—of his relation who is a gold medal winner over at the Olympics; I'm always proud of anyone who achieves success in whatever effort they take. But there is nothing in here that's going to take a gun away from that man; nothing in here that's going to take the guns away from any of you. And as my seatmate here so ably put it, if we haven't got the gumption, the guts, to stand up under what we think is right, what we came here for—Now, when you came here, when you ran for election, was there a single one of you who got up and said, "I'm going to put something in the Constitution to make it impossible to register a gun"? All of you said or agreed to that you would put back in the Constitution what was already there; and this fear that you have—World War I, we had to register our guns and we all still had them when the war was over. And we're writing a Constitution here that is supposed to show to the people of Montana that we have some degree of decision on our own part. I am sure that there are more people in Montana who don't own guns than there are who do own guns, and I realize that all of you have been lobbied. Some of you have fell prey to that lobby and have got up here and stood on the floor and said, "I weakened; I couldn't stand up under the pressure; I'm afraid to go home; I haven't got any backbone to me so I'm going to vote for these nine little words that merely show that we haven't got the guts to be a good delegate and stand up under our own convictions and our own thinking." I know those are strong words, but that's the way I feel.

CHAIRMAN GRAYBILL: Now, fellow delegates, I have two more amendments on Section 12 here, but I never see the people who sponsored them stand up; so either you can stay down if you don't want to amend yet, and you can stand up if you do.

Mrs. Babcock.

DELEGATE BABCOCK: Mr. Chairman. I fail to see how, in one breath, we can ask the citizens of Montana to participate in our government and at the same time, when they write to us and say that they want us to do something, that that's a threat. Therefore, I'm going to vote for the nine words. Thank you.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: I think probably most people's minds are already made up and we probably should go for the vote on it. I would like just to mention one thing concerning the telegram, so there can be no question later about intentions on the Bill of Rights Committee or that telegram. Originally there was a rumor around the State of Montana that the Bill of Rights Committee actively wanted to register guns. As a result of that rumor, the telegram from Billings came to our committee, asking us not to change the wording in the present provision. They did not realize that not only was there not a movement to register guns, there was a suggestion from Delegate Berthelson to prohibit the registration of guns. Delegate Berthelson's Proposal Number 4 would have completely removed Section 13 and replaced it with new language which some gun people had told me would eliminate the right completely. I always felt that that proposal, if adopted, would allow some groups to go out and say the right would be eliminated if it was adopted and the present one was gone. Now, I really believe that the people that sent that telegram were not inconsistent when they feel today that they accept his amendment to the present provision. I think also that I've talked to the people and I have complete understanding with the people in our area that in no way can the Montana constitutional provision interfere in any manner with the federal law now in effect, and it may be in effect in the future. They seem to understand that completely. We seem to categorize some of them as extremists, but I have a great deal of mail—I have it from doctors, professional people, who are also very avid sportsmen; hunters, who also have recreational use. I'm a member of the skeet-trap club. You don't always shoot a gun to kill; you can shoot it for skeet and trap, which I enjoy very much, as well as hunting. I really feel that the people would feel more secure with this. I think if it came to a vote to them, they'd adopt it. I'm not threatened by it because the federal standards will control anyway; but on the telegram, I think that should be understood so later they can't say that this telegram was used to misrepresent their views. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Siderius.

DELEGATE SIDERIUS: Mr. Chairman. Just for a point of clarification, would someone explain to me what—after the word "summoned"—"shall not be called in question"—will someone explain to me what that means?

CHAIRMAN GRAYBILL: Since no one stands, Mr. Siderius, the Chair believes that that's language possibly out of the national Constitution, and it has been, I think, used before to indicate "shall not be abridged or stopped". I think it's out of the national Constitution, where it serves the same purpose. Is that right, Mr. Dahood? Do you know?

DELEGATE DAHOOD: That's right. That merely indicates that the right shall remain inviolate and shall not be questioned by any person in a position of authority.

CHAIRMAN GRAYBILL: Mr. Skari.

DELEGATE SKARI: Mr. Chairman, I, too, have resisted these nine words. I think that, like a lot of the delegates, I have tried to be a purist at this Convention; no legislation. But I suppose that I've supported provisions that a lot of people would consider legislation. Maybe I've crossed that line between delegate and politician, but I suspect that maybe that's not such a clear and definite line. I think perhaps that the decisions are not quite that clear. I think, though, that people are tired of bureaucracy; they are tired of red tape; and they are tired of the paper-shuffling. I can see that these nine words can cause us no harm; therefore I intend to support the Berthelson amendment.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman and fellow delegates, I would just like to rise in support of the committee majority position. Those of you who had your minds made up before you came to this debate, this will in no way affect you; but those of you who realize the dilemma that we're up against in this particular problem, I give you full confidence that the committee deliberated carefully on this question. We listened to both sides carefully, and I feel in the calmness of reasonable men, we came to a legitimate and fair conclusion. And I request that any of you who are in doubt in any way to rely upon the committee that has worked diligently on this question. I certainly want to go on record opposed to gun registration, but at the same time I strongly support the position of the majority in this particular matter and feel that the provision we have in this section for the Constitution is the best provision; and I oppose the Berthelson amendment. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, would Mr. Foster yield to a question?

CHAIRMAN GRAYBILL: Mr. Foster?

DELEGATE FOSTER: Yes, sir, Mr. Chairman, gladly.

DELEGATE KAMHOOT: Don, was this amendment ever presented to you as a committee—these nine words in that order?

DELEGATE FOSTER: Yes, they were.

DELEGATE KAMHOOT: And you discarded them?

DELEGATE FOSTER: I would enlarge upon that a little bit. We felt that the Constitution was not the place to, in a sense, remove any possibility of any provision ever being enacted in the future if the Legislature felt it was necessary, and at the same time we felt that we had a very strong section and we didn't feel that it was desirable to have these words in the Constitution.

DELEGATE KAMHOOT: Thank you. Mr. Chairman, would Mr. Campbell yield to a question?

CHAIRMAN GRAYBILL: Mr. Campbell?

DELEGATE CAMPBELL: I will yield, Mr. Chairman.

DELEGATE KAMHOOT: Bob, I will put the same question to you. Was this presentation of these nine words in that order put to you in your committee?

DELEGATE CAMPBELL: Our delegate proposal was Number 4. That was the proposal that was supported by some people at the time. That proposal was considered and rejected. We came out at the Romney hearings with the present section that we have. That is the one we have solidified in the final report. At no time, to my knowledge, did the committee officially receive and consider seriously changing and adopting to these specific words. I—this is a later amendment. It did come in late, I will admit. It was not presented early at the Convention. Delegate Proposal Number 4 was the only change that we considered, and we decided not to go with it.

DELEGATE KAMHOOT: Thank you, Mr. Campbell. Mr. Chairman, I would like to submit to the body here at this time, I think this is nothing more than a chauvinistic effort on the part of this committee to protect what they've come out with—and they've come out with a pretty good Bill of Rights—but I still think this is mainly the reason that they're standing so tight on it. I don't think that they're worried that these nine words are going to ruin anything, and I would certainly be afraid if they are worried that these nine words may upset something in the future for Montana. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. Berthelson's amendment. Mr. Berthelson would add to line 20 on page 6 of Section 12, the words: "nor shall any person's firearms be registered or licensed." Do you want to close?

DELEGATE BERTHELSON: Mr. President, I'd like to close.

CHAIRMAN GRAYBILL: Very well, you may close.

DELEGATE BERTHELSON: Thank you, Mr. President [Chairman]. Fellow delegates, I feel a little bit like David of old must have felt when he went out to meet the giant, armed only with a slingshot. I stand here, armed with my slingshot of no formal education. The only formal education I have I received in the University of Hard Knocks. I respect Mr. Dahood for his very, very eloquent training. I respect Mr. Chet Blaylock for his education and all of the experience that he has had as a politician. But I am going to attempt to clear up some things very briefly now that seem to be in question. There is no inconsistencies in what has been done. Early in this committee's deliberations there was a rumor circulated throughout this state that there was to be introduced a proposal to require the registration of firearms. It was in response to that rumor that this telegram that lays on this man's desk came. It was in response to that rumor that many, many, many of the letters came to the delegates to this Convention. And now since this amendment containing nine words has been presented to this Convention—and I say it was never presented to the committee when they were in their deliberations—the gun owners and the gun enthusiasts and the sportsmen of Montana are now supporting this amendment. I am real glad that Mr. Blaylock fervently and passionately referred to the accidents that guns cause. He read some statistics for you, and I'd like to read those same statistics from the same sheet that Mr. Blaylock used. Mr. Blaylock was right when he read that a hundred and fourteen lives were lost last year in accidents of all types. Leading the grim parade was 54,800 fatalities caused by motor vehicles; 17,500 deaths due to falls; and 7,300 from drowning. Fire,burns, and so forth caused sixty-seven hundred deaths; poisoning, forty-six hundred; and suffocation, thirty-four hundred. What he didn't read was that firearm accidents took 2,300 lives. Based on total population, firearms accidents recounted for 1 death for each 90,000 people in this country. I'm going to hurry along. Mr. Blaylock and Mr. Dahood both talked about the problems of violence and crime. Now, registration of guns is no solution to the problem. It isn't effective; criminals don't register guns. Registration simply cannot and will not prevent or reduce violence. Registration usually creates more problems than it solves. I want to say just a word about the economic value of guns and their use in this state. I would call your attention, if you will think with me, that firearms have an important social economic impact in the field of conservation and natural resources management. I call your attention—and I don't have to go into any figures as to how much money, economically, the use of firearms brings into this state. But as important as that is the fact that the use of firearms for lawful use in recreational activities aids our economic, sociological and political forces, supporting the conservation and wild use of our natural resources—and wise use of our natural resources. Sportsmen cannot be expected to jeopardize the existence of their sport or these very vital economic, sociological and political forces supporting the conservation and wise use of our natural resources by allowing registration of firearms. I want to read, in closing, three testimonials. Hubert H. Humphrey, former Vice-President of the United States, had this to say—and I quote: "The right of the citizen to bear arms is just one more guarantee against arbitrary government, one more safeguard against tyranny, which now appears remote in America, but which historically has proved to be always possible"—end of quote. This is a clipping from a Fullerton, California, *News Tribune* article by Billy Graham, and Billy Graham said—and I quote: "Back to your question about the gun control law stopping killings in the United States; in the final analysis, a gun cannot harm anyone unless there is a human being to pull the trigger. Ten million guns would be harmless unless some human became stimulated by hate, greed or prejudice"—end of quote. And Paul Harvey, the dynamic news commentator who makes page 1 understandable and page 3 exciting, stated on one of his regular radio programs—quote: "If the government of the people cannot trust the citizens with a gun, then the citizens cannot trust the government." Fellow delegates, gun registration is foreign and repugnant to our Montana heritage and traditions. Registration or licensing must be prevented. A registered gun is easily confiscated. To allow that guns would ever be registered or licensed would be an irreversible step if we took that step today. Fellow delegates, let us insure that the things I have talked about will never happen here by voting for this amendment. Thank you.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Berthelson's amendment to add the words "nor shall any person's firearms be registered or licensed." I take it you want a roll call vote. All those in favor of his amendment, vote Aye; all those opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Take the vote, please, Mr. Clerk.

Aasheim	Nay
Anderson, J.	Aye
Anderson, O.	Nay
Arbanas	Nay
Arness	Nay
Aronow	Aye
Artz	Aye
Ask	Aye
Babcock	Aye
Barnard	Nay
Bates	Absent
Belcher	Aye
Berg	Nay

Berthelson	Aye
Blaylock	Nay
Blend	Aye
Bowman	Absent
Brazier	Nay
Brown	Nay
Bugbee	Nay
Burkhardt	Nay
Cain	Aye
Campbell	Aye
Cate	Nay
Champoux	Aye
Choate	Aye
Conover	Aye
Cross	Nay
Dahood	Nay
Davis	Aye
Delaney	Aye
Driscoll	Nay
Drum	Aye
Eck	Nay
Erdmann	Aye
Eskildsen	Excused
Etchart	Nay
Felt	Nay
Foster	Nay
Furlong	Nay
Garlington	Aye
Gysler	Aye
Habedank	Aye
Hanson, R.S.	Aye
Hanson, R.	Nay
Harbaugh	Nay
Harlow	Nay
Harper	Nay
Harrington	Nay
Heliker	Aye
Holland	Aye
Jacobsen	Aye
James	Nay
Johnson	Aye
Joyce	Nay
Kamhoot	Aye
Kelleher	Nay
Leuthold	Absent
Loendorf	Nay
Lorello	Aye
Mahoney	Aye
Mansfield	Nay
Martin	Nay
McCarvel	Nay
McDonough	Nay
McKeon	Nay
McNeil	Aye
Melvin	Nay
Monroe	Nay
Murray	Aye
Noble	Aye
Nutting	Absent
Payne	Nay
Pemberton	Aye
Rebal	Aye
Reichert	Nay
Robinson	Aye
Roeder	Nay
Rollins	Nay
Romney	Nay
Rygg	Aye
Scanlin	Nay
Schiltz	Nay
Siderius	Nay
Simon	Nay
Skari	Aye
Sparks	Nay
Speer	Nay
Studer	Aye
Sullivan	Nay
Swanberg	Aye
Toole	Aye
Van Buskirk	Aye
Vermillion	Nay
Wagner	Nay
Ward	Aye
Warden	Nay
Wilson	Aye
Woodmansey	Aye
Mr. Chairman	Nay

CLERK SMITH: Mr. Chairman, 43 have voted Aye, 52 have voted No.

CHAIRMAN GRAYBILL: 52 having voted No, 43 Aye, Mr. Berthelson's amendment is defeated. We are discussing Section 12, the right to bear arms. Are there other amendments? (No response) I take it, then, that I can pass the other two amendments sent up to the Chair.

Mr. Campbell, do you want to pass?

DELEGATE CAMPBELL: I would like to have you read that amendment I sent up, please.

CHAIRMAN GRAYBILL: Very well, the clerk may read Mr. Campbell's amendment.

CLERK HANSON: "Mr. Chairman. I move to amend Section 12, Bill of Rights Committee proposal, on page 6, lines 17 through 22, by adding the following words: 'The right of any person to keep or bear arms in defense of his own home, person and property'—and inserting, 'or recreational use, comma'—and further reading:

'or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.' Signed: Campbell."

CHAIRMAN GRAYBILL: Very well, Mr. Campbell has proposed an amendment that would add, on line 19, after the word "property", the word "or residential use"—the sense of the amendment being to say that—the right of a person to keep or bear arms for residential use.

CLERK HANSON: Recreational.

CHAIRMAN GRAYBILL: Recreational —recreational use, pardon me—"for recreational use shall not be called in question."
Mr. Campbell.

DELEGATE CAMPBELL: I won't dwell on this. There was a legitimate concern as much as registration and licensing over preservation of hunting—or preservation of guns, not only for defense of your home or property, but also for legitimate recreational use. I don't know how widescale the national movement is that some people are concerned about, considering the banning of hunting as being cruel to animals and should be eliminated. The Western Montana Fish and Game Department from our area has recommended, to protect the people of Montana from their legislatures in the future, that this provision be placed in the Constitution. I won't mention our sister state to the east, since it has been mentioned so many times, but I might add that they did also include this on their right to keep and bear arms section at this time. I don't know that required discussion is necessary on this, and I think it could be put to a vote. Thank you.

CHAIRMAN GRAYBILL: Mr. Blaylock.

DELEGATE BLAYLOCK: Mr. President [Chairman], I resist the amendment. This is the same kind of reasoning that was used on the previous amendment. We're putting up arguments about things that are not—have not come to pass and will not come to pass. This doesn't add anything. We still—this section, as it is, is the broadest, strongest right to bear arms section of any state in the Union, and I resist the amendment. Let's leave it alone and put it in as the majority report of the committee stands.

CHAIRMAN GRAYBILL: Is there further discussion? (No response) If not, the issue is on Mr. Campbell's motion to amend Section 12 by adding the words "or recreational use" on line 19, after the word "property". So many as shall be in favor of Mr. Campbell's amendment to add "or recreational use", please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No. Division.

CHAIRMAN GRAYBILL: All right, we'll use the voting machines. So many as are in favor, vote Aye; and so many as are opposed, vote No. Has every delegate voted?
(No response)

CHAIRMAN GRAYBILL: Any delegate want to change?
(No response)

CHAIRMAN GRAYBILL: 49 having voted No, 33 Aye, the motion is defeated. Is there other discussion of Section 12? (No response) Members of the committee, you have before you for your consideration, when this committee does arise and report, after having had under consideration Section 12 of the Bill of Rights, that this committee recommend the same be adopted. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

UNIDENTIFIED DELEGATES: Roll call.

CHAIRMAN GRAYBILL: You want a roll call on Section 12?

UNIDENTIFIED DELEGATES: Yes.

CHAIRMAN GRAYBILL: All right, we'll have a roll call on Section 12. So many as are in favor of the motion, vote Aye on the voting machine; and opposed, vote No. Have all the delegates voted?
(No response)

CHAIRMAN GRAYBILL: Any delegate want to change his vote?
(No response)

CHAIRMAN GRAYBILL: Please take the vote.

Aasheim	Aye
Anderson, J.	Aye
Anderson, O.	Aye

Arbanas	Aye
Arness	Aye
Aronow	Absent
Artz	Nay
Ask	Absent
Babcock	Aye
Barnard	Aye
Bates	Aye
Belcher	Aye
Berg	Aye
Berthelson	Nay
Blaylock	Aye
Blend	Absent
Bowman	Aye
Brazier	Absent
Brown	Aye
Bugbee	Absent
Burkhardt	Absent
Cain	Aye
Campbell	Aye
Cate	Aye
Champoux	Aye
Choate	Aye
Conover	Aye
Cross	Aye
Dahood	Aye
Davis	Aye
Delaney	Aye
Driscoll	Aye
Drum	Absent
Eck	Aye
Erdmann	Nay
Eskildsen	Excused
Etchart	Aye
Felt	Aye
Foster	Aye
Furlong	Aye
Garlington	Aye
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Aye
Harlow	Aye
Harper	Aye
Harrington	Aye
Heliker	Aye
Holland	Absent
Jacobsen	Absent
James	Aye
Johnson	Aye
Joyce	Aye
Kamhoot	Aye
Kelleher	Absent
Leuthold	Absent

Loendorf	Aye
Lorello	Absent
Mahoney	Absent
Mansfield	Aye
Martin	Aye
McCarvel	Aye
McDonough	Aye
McKeon	Aye
McNeil	Aye
Melvin	Aye
Monroe	Aye
Murray	Aye
Noble	Absent
Nutting	Absent
Payne	Aye
Pemberton	Aye
Rebal	Aye
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Aye
Romney	Aye
Rygg	Aye
Scanlin	Aye
Schiltz	Aye
Siderius	Aye
Simon	Aye
Skari	Aye
Sparks	Aye
Speer	Aye
Studer	Aye
Sullivan	Aye
Swanberg	Aye
Toole	Aye
Van Buskirk	Aye
Vermillion	Aye
Wagner	Absent
Ward	Nay
Warden	Aye
Wilson	Absent
Woodmansey	Aye
Mr. Chairman	Aye

CLERK HANSON: Mr. Chairman, 76 delegates voting Aye, 6 voting No.

CHAIRMAN GRAYBILL: 76 having voted Aye, and 6 voting No, Section 12 is adopted. Will the Clerk read Section 13.

CLERK HANSON: "Section 13, Right to suffrage. All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." Mr. Chairman, Section 13.

CHAIRMAN GRAYBILL: Mrs. Sullivan.

DELEGATE SULLIVAN: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Section 13 of Proposal Number 8, it recommends that the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Sullivan.

DELEGATE SULLIVAN: The committee felt that this section should be left just as it is, a guarantee that the right of suffrage shall not be interfered with and that elections shall be free and open. Accordingly, the provision as proposed is the verbatim wording of Article III, Section 5, of the present Montana Constitution. The provision is supplemented, but not replaced by, the proposals of the General Government Committee on Suffrage and Elections. No delegate proposals were received on this provision—thank heaven. (Laughter)

CHAIRMAN GRAYBILL: All right, is there discussion on Section 13, the Right to Suffrage? (No response) Members of the committee, you have before you Section 13 and you have Mrs. Sullivan's motion that when this committee does arise and report, after having had it under consideration, that we recommend it do—be adopted. All in favor of adopting Section 13, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Will the clerk read 14.

CLERK HANSON: "Section 14, Adult rights. Persons 18 years of age are declared to be adults for all purposes and shall have the right to hold public office in the state." Mr. Chairman, Section 14.

CHAIRMAN GRAYBILL: Section 14, Mr. Campbell. The—your books should be amended on page 6 by striking the word "any". Is that right, Mr. Campbell?

DELEGATE CAMPBELL: That is correct, Mr. Chairman.

CHAIRMAN GRAYBILL: On line 29, the committee wishes this report to be made with the word "any" before "public office" stricken, so that it reads: "the right to hold public office in the state." Where would that reference may—be on the other page? Strike the word "any". It's on page 27, line 25.

Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 14 of Proposal Number 8, it recommends that the same be adopted as amended.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: The amendment made, of course, was to drop the word "any" from the provision which would, of course, otherwise be in conflict with our decision on two previous occasions on the Executive Article. It's with great hesitancy, of course, that I watch this happen, since I think that all of us in our lifetimes will see either a constitutional amendment to our Constitution to eliminate this or a United States constitutional amendment which will bring Montana in line with the rest of the nation. I would just like to quote one thing that hadn't been brought up, and I hesitated to bring it up before; and that, of course, was the position of labor on this particular issue. In many other issues, of course, it has been said they had an economic interest, but on this one, I'd just like to quote you what they did say: "In a democratic form of government, there should only be one kind of citizenship. To say that an 18-year-old possesses the necessary capabilities to vote yet is not eligible for public office because of his age does violence to the concept of equal citizenship. Any person of legal voting age, provided he or she has the necessary nonage qualifications as the office may require, is fully entitled to seek public office, with their candidacy to succeed or fail according to the judgment of their peers at the polling place. We of Montana AFL-CIO are proud to point out that our organization was for many years in the forefront of the long fight to secure the vote for citizens 18 years and older." I would just like to close by saying that what the provision—the present Section 14 does is simply acknowledge and welcome in, less enthusiastically than I would have liked, the new citizens who have been accepted by our nation as responsible citizens and eligible to vote and certainly eligible for office, except for the higher offices in the Executive Article. This was the decision on two previous occasions, and if Jeannette Rankin can't change her mind, nobody can; and I would move that it be adopted as presented. Thank you.

CHAIRMAN GRAYBILL: Mr. Garlington.

DELEGATE GARLINGTON: Mr. Chairman, I feel there is a technical conflict here between the broad right to hold public office, as stated in Section 14, and the provisions in the Executive Article on professional qualifications for the Attorney General and the provisions in the Judicial Article as qualifications for Judge of the District Court and Justice of the Supreme Court; and I therefore have proposed a short amendment to be added onto this which would be in the nature of an exception for those instances where professional qualifications are required. I move that the Section 14 be amended by adding that exception for professional qualifications, which you have the only copy of.

CHAIRMAN GRAYBILL: The clerk will please read Mr. Garlington's proposal.

CLERK HANSON: "Mr. Chairman. I move to amend Section 14 by adding the following at the end: 'except those for which professional qualifications are required, period'—end quote. Signed: Garlington."

CHAIRMAN GRAYBILL: Mr. Campbell—No, Mr. Garlington's amendment adds the phrase "except for professional qualifications"—"except those for which professional qualifications are retired—are required", at the end of Section 14. Do you want to discuss it further?

DELEGATE GARLINGTON: I think it's self-evident, Mr. Chairman. I just feel that the provision of Section 14 here has no qualification on right to hold public office, and since the offices of the Judicial branch and of the Attorney General are public offices, we should reconcile the difference in order to avoid a conflict or confusion between the two.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: May I ask—would Delegate Garlington yield to a question, please?

DELEGATE GARLINGTON: He will.

DELEGATE CAMPBELL: Delegate Garlington, would you have any objection to the addition on the end of your amendment, "any professional qualification as provided in this Constitution"?

DELEGATE GARLINGTON: Not at all, because I think that's the place where the problem arises.

DELEGATE CAMPBELL: Thank you. I would like to amend it to add "qualification as found in this Constitution". And with that amendment, I would certainly approve it, and I think the Bill of Rights Committee would approve it. This has always been our intention, that professional qualifications, such as a law degree for a County Attorney or a Judge, certainly are necessary; and I certainly, with that amendment, would have no opposition.

CHAIRMAN GRAYBILL: Now, do I understand you're making another substitute—or additional amendment to Mr. Garlington's, Mr. Campbell? Are you amending his language to say "except those for which professional qualifications are found in this Constitution"? Is that what you said?

DELEGATE CAMPBELL: "—are provided in this Constitution".

CHAIRMAN GRAYBILL: All right, the situation is that we have Mr. Campbell's amendment which adds "provided for"—"provided in this Constitution", which takes the place of the word "required" in Mr. Garlington's amendment; so that if Mr. Campbell's motion prevails, it would say: "except those for which professional qualifications are provided in this Constitution." If Mr. Garlington's prevailed—

Mr. Garlington, do you care whether it says one way or the other?

DELEGATE GARLINGTON: No, your honor. We've just been discussing—

CHAIRMAN GRAYBILL: Wait a minute now—(Laughter) I can't say I don't like it, but it just isn't accurate. (Laughter)

DELEGATE GARLINGTON: —or, Mr. Chairman, we've just been discussing here that perhaps we have not adequately taken care of the conflict that might exist with respect to the 25-year-old qualification for some of the Executive offices. It may be that the amendment is slightly inept in this respect.

CHAIRMAN GRAYBILL: I wonder if the Chair might suggest—Mr. Artz has an amendment up here which says: "except as provided otherwise in this Constitution." Now, that would seem to me to cover all the problems, the 25-year-old, plus the Judges, plus the Attorney General.

DELEGATE GARLINGTON: I would be glad to withdraw my amendment in favor of that one.

CHAIRMAN GRAYBILL: Would you and Mr. Campbell both withdraw?

DELEGATE GARLINGTON: I will.

DELEGATE CAMPBELL: Yes.

CHAIRMAN GRAYBILL: Mr. Artz, you're on.

DELEGATE ARTZ: Let's vote.

CHAIRMAN GRAYBILL: Mr. Artz would make an amendment that would say: "except as provided otherwise in this Constitution." He would add that language at the end of adult rights for the purpose of picking up the three groups we've talked about. Do you care to discuss it further, Mr. Artz?

DELEGATE ARTZ: No.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. President, I'm going to make a substitute motion that Section 14 be deleted.

Mr. Chairman.

CHAIRMAN GRAYBILL: All right, wait till I do my bookwork here. Very well, the situation now is that Mr. Garlington and Mr. Campbell have withdrawn their amendments to Section 13. Mr. Artz has made an amendment that says: "except as otherwise provided in this Constitution", and Mr. Brown has made a substitute motion that we delete Section 13—Section 14—it is—in its entirety.

Mr. Brown.

DELEGATE BROWN: Mr. Chairman, I feel that this section is in direct conflict with the section we put in on Suffrage and Elections. Now, if you allow them to hold public office with the amendments they've put in, that would allow a felon to hold office, subject to his parole. Then we put, in suffrage, subject to additional qualifications provided by the Legislature, such as county attorneys, county health officers, et cetera, and we completely covered that. And now we are putting in a conflicting section under the Bill of Rights. I'd have no objections to declare that 18-year-olds are adults, but don't get into this public office thing, because we've already covered it.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Mr. President [Chairman], I agree with Mr. Brown. There's no definition as to what a public office is, and they've now limited it to a public officer. Anybody could serve as a public officer who meets the guidelines set out by this Constitution, and there can be—very well be Legislative officers set up who could be classified as public officers that would have to have more qualifications than what's set forth in this Constitution—and especially those officers who are classified as public officers who are appointed. I certainly agree with Mr. Brown that this section should be deleted before it ties up the Legislature so it couldn't set any qualifications for any type of public office.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. President [Chairman], I resist Mr. Brown's motion. I'd like to have the Constitution shortened, and we have covered some things, but I think the portion of this section—persons 18 years of age are declared to be adults for all purposes—should remain in the Bill of Rights, and by deleting the whole thing we would not have it in there.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. Chairman, I believe Mr. Habedank is right; and if I could, I'd amend my motion to put a period after "all purposes" and then delete the rest; and I think it would satisfy everybody—I hope.

CHAIRMAN GRAYBILL: Mr. Brown, I'm going to let you withdraw. Mr. Brown, you're going to withdraw and then make a new motion deleting only up to the word "purposes"—after the word "purposes"? Is that right?

DELEGATE BROWN: Yes, sir, and then delete the remainder of that section.

CHAIRMAN GRAYBILL: Delete lines 29 and 30?

DELEGATE BROWN: Correct.

CHAIRMAN GRAYBILL: All right, for the body, the sense of the situation now is that Mr.

Brown has deleted only the last half of that section. He's deleted the lines 29 and 30 on page 6, so that the section now reads: "Persons 18 years of age are declared to be adults for all purposes."

Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman, I would support Mr. Brown, and I appreciate his removing of his motion to delete. I think there should be some reference here. I think that we can accept the young people. I think they will be satisfied with this. I think we can be proud of it, and I would simply like to close.

CHAIRMAN GRAYBILL: Is there other discussion of Mr. Brown's proposal?

Mrs. Babcock.

DELEGATE BABCOCK: Could I just ask a question? Mr. Brown, I did receive some correspondence about people who are on welfare; that if this is left, that they'd lose part of their payments. Do you know if that's correct, or if we should consider that, or if it's important?

DELEGATE BROWN: Do you mean the Suffrage and Elections Article or this article?

DELEGATE BABCOCK: No, women who have children that are 18 years old can still receive benefits, because they are not considered adults.

DELEGATE BROWN: Well, I believe they're adults under our statutory law now—or 19—and I know, Social Security, you can get benefits for an 18-year-old or over attending college. I don't think it would present any problem.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Brown's motion to delete the last half of Section 14 so it reads: "Adult rights. Persons 18 years of age are declared to be adults for all purposes,—period". Do you want a roll call on that?

DELEGATES: Yes.

CHAIRMAN GRAYBILL: So many as shall be in favor, vote Aye on the voting machine; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Take the vote, please.

Aasheim	Absent
Anderson, J.	Aye
Anderson, O.	Aye
Arbanas	Aye
Arness	Absent
Aronow	Aye
Artz	Aye
Ask	Aye
Babcock	Aye
Barnard	Aye
Bates	Aye
Belcher	Aye
Berg	Aye
Berthelson	Aye
Blaylock	Aye
Blend	Aye
Bowman	Aye
Brazier	Aye
Brown	Aye
Bugbee	Aye
Burkhardt	Aye
Cain	Aye
Campbell	Aye
Cate	Aye
Champoux	Aye
Choate	Aye
Conover	Absent
Cross	Aye
Dahood	Aye
Davis	Absent
Delaney	Aye
Driscoll	Absent
Drum	Absent
Eck	Aye
Erdmann	Aye
Eskildsen	Excused
Etchart	Absent
Felt	Aye
Foster	Aye
Furlong	Absent
Garlington	Aye
Gysler	Absent
Habedank	Aye
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Aye
Harlow	Aye
Harper	Aye
Harrington	Nay
Heliker	Aye
Holland	Absent
Jacobsen	Aye
James	Aye

Johnson	Aye
Joyce	Aye
Kamhoot	Aye
Kelleher	Nay
Leuthold	Aye
Loendorf	Aye
Lorello	Aye
Mahoney	Absent
Mansfield	Aye
Martin	Aye
McCarvel	Aye
McDonough	Aye
McKeon	Aye
McNeil	Absent
Melvin	Aye
Monroe	Aye
Murray	Aye
Noble	Aye
Nutting	Aye
Payne	Aye
Pemberton	Aye
Rebal	Aye
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Aye
Romney	Aye
Rygg	Aye
Scanlin	Aye
Schiltz	Absent
Siderius	Aye
Simon	Aye
Skari	Aye
Sparks	Aye
Speer	Aye
Studer	Aye
Sullivan	Aye
Swanberg	Absent
Toole	Aye
Van Buskirk	Aye
Vermillion	Aye
Wagner	Aye
Ward	Aye
Warden	Absent
Wilson	Aye
Woodmansey	Aye
Mr. Chairman	Aye

CHAIRMAN GRAYBILL: Mr. Harrington.

DELEGATE HARRINGTON: I would like to change my vote. I made a mistake. (Laughter)

CHAIRMAN GRAYBILL: Mr. Harrington. Go ahead and announce the vote.

CLERK HANSON: Mr. Chairman, 82 delegates voting Aye, 2 voting No.

CHAIRMAN GRAYBILL: Now, Mr. Harrington, after I push that button I can't change it, but you may stand and explain it to the journal.

DELEGATE HARRINGTON: Well, to be truthful, I thought we were voting on the amendment, and I was voting against the amendment on this, so it's my fault.

CHAIRMAN GRAYBILL: Your point is you voted wrong and you wish you had voted the other way?

DELEGATE HARRINGTON: Yes.

CHAIRMAN GRAYBILL: Very well, the record may show Mr. Harrington wishes he voted the other way. (Laughter) 82 having voted Aye, 2 having voted No, the motion carries and the last half of Section 14 is deleted. Are there other—that wipes out your amendment, Mr. Artz, it seems to me. Are there other amendments to Section 14? Members of the committee, you have before you for your consideration, upon the recommendation of Mr. Campbell that when this committee does arise and report, after having had under consideration Section 14 as amended, that the same be recommended for adoption. All in favor of that, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Fourteen is adopted. Will the clerk read 15.

CLERK HANSON: "Section 15, Rights of persons under the age of majority. The rights of persons under the age of majority shall include but not be limited to all the fundamental rights of this article, except where specifically precluded by laws which enhance the protection for such persons." Mr. Chairman, Section 15.

CHAIRMAN GRAYBILL: Mr. Monroe—I'm sorry.

DELEGATE MONROE: Mr. Chairman. I move that when this committee does rise and report, after having under consideration Section 15, Proposal Number 8, it recommends that the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Monroe.

DELEGATE MONROE: The committee adopted, with one dissenting vote, this statement explicitly recognizing that persons under the age of majority have all the fundamental rights of the Declaration of Rights. The only exceptions permitted in this recognition are in cases in which rights are infringed by laws designed and operating to enhance the protection for such persons. The committee took this action in recognition of the fact that young people who have not been held to possess basic civil rights—although it has been held that they are persons under the due process clause of the 14th Amendment, the Supreme Court has not ruled in their favor under the equal protection clause of that same amendment. What this means is that persons under the age of majority have been accorded certain specific rights which are felt to be part of the due process. However, the broad outline of the kinds of rights young people possess does not yet exist. This is the crux of the committee proposal—to recognize that persons under the age of majority have the same protections for—from governmental and majoritarian abuses as do adults. In such cases where the protection of the special status of minors demands it, exceptions can be made on clear showing that such protection is being enhanced. This provision was taken in part from Delegate Proposal Number 65 and Number 88. Mr. Foster, I think—one of his proposals—I think they've got the wrong number there—but it was 65, my proposal, and Mr. Foster's proposal, I believe, were the ones that were combined to make this Section 15. I would disclose at the beginning that I have a special interest in this particular section. For about the past 10 years, I've been involved in youth development type programs with the YMCA and Red Cross, Encampment for Citizenship and Mockford Development, and school programs, et cetera; and from this experience I've learned to know young people and to understand many of their circumstances. What this section is attempting to do is to help young people to reach their full potential. Where juveniles have rights at this time, we certainly want to make sure that those rights and privileges are retained; and whatever rights and privileges might be given to them in the future, we also want to protect them. But we do not want them to lose any rights that any other Montana citizen has, and this is specifically what this particular section is attempting to do. We hope that it would enhance the proper parent-child relationships in Montana families and help strengthen the family unit. We had a lot of very informative and well-presented testimony from many different groups in our community and our state. The Montana Advisory Council on Children and Youth came before us with five people testifying, representing over the past couple of years over 200 community-type meetings involving over 6,000 people. As we have been quoted to this body before, one-half of the State of Montana's population is under the age of 25, so when we talk about children and youth in the state or those people under the age of majority, we know that we're talking about from—anywhere from one hundred to about a hundred and fifty thousand people. Seventy-one people came before our committee, with five people giving written testimony. I consider these people the cream of Montana's young adult crop. I have much of the testimony here in brochures that you can view. Judge Brownlee from Missoula has compiled the Juvenile Codes of the State of Montana. I have these here for you to view. I think all of us in the body have received letters from our own constituents in our communities and areas that are concerned about the rights of children under the age of majority. Our research analyst of our committee compiled much information for us and our committee report, pages 301 through 305, discussed the situation of people under the age of majority quite thoroughly. And from those—this research and the testimony, we have devised Section 15. In quoting our Chairman, Mr. Dahood, it is altogether fitting and proper that we should give our young adults—and as our Chairman, our President of our Convention mentions, our most valuable resource—And our Chairman of our committee says that if we're expecting these people to respect us, I think we should respect them in some way. it seems to me that Montana can be the leader among all the states in recognizing the rights of people under the age of majority. If there's any questions, I'll certainly try and answer them. I move that this section be adopted, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there discussion?

Mr. Rygg.

DELEGATE RYGG: Would Mr. Monroe yield to a question?

CHAIRMAN GRAYBILL: Mr. Monroe?

DELEGATE MONROE: I yield.

DELEGATE RYGG: I'm just wondering—I read this and I still wonder. Could you give me an example of what we're doing? Just one concrete example so that I could find out just what you're trying to do?

DELEGATE MONROE: Okay. Right now, young people are not generally protected by constitutional standards of fairness and due process of law, such as the right to counsel, trial by peers or jury, the right against self-incrimination, and the right to know the nature and cause of accusation. I would cite myself, maybe, as an example, Mr. Rygg. In 1964 I had the pleasure of attending a basketball tournament in Butte, Montana. It was a state basketball tournament, and it was the first one I'd ever been to. Well, some of my friends had traveled down to the tournament in the fair city of Butte beforehand, and along the way they stopped by Helena and they had done some mischievous deeds. And they attended another school, and I met them in the city of Butte and asked them if they could give me a ride to my motel. Well, at the time I was in their car they were apprehended by the police officers and I was incarcerated, and this was my first basketball tournament and the only one I was ever able to attend. There I was, without having seen a basketball game, sitting in the jail of Butte. Now, I didn't know what I was sitting there for, and in this instance I did not know the nature or the cause of any of the accusations that were being brought against me. I didn't know anything, and there I was incarcerated. I was not able to make a phone call or anything. And that would be just one small example. There's certainly examples of where children's rights are not afforded them in child-abuse cases, for example. I've got a file in here; the Montana Advisory Council on Children and Youth has compiled documentation of specific instances where a child's—or rights of children and youth are just nonexistent, really. And what we're attempting to do by this particular section is to give them rights, except where specifically precluded by law. Now, when we say "specifically precluded by law"—let's say there's a law on the books that says you've got to be 16 years old to have a driver's license, and that is to protect and enhance that individual. That law is on the book to protect and enhance them. Or if it says they must be 19 years old, which is the majority age in Montana right now until, hopefully, this Constitution is adopted; then it will be 18. But that law, 19, that they could drink legally, is there to protect them. So we're suggesting that they would have all the rights of this article except where it's specifically precluded by laws in this article—in this Constitution, or any laws on the statute books that are there now to protect and enhance them or that might come in the future. I went a little bit further than answering your question, but my own specific example is where I felt that some of the rights of those people under the age of majority were being infringed upon.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. Chairman, I don't see, really, the purpose of this article, even after the explanation. This Bill of Rights covers all people, and it doesn't say only those over the age of majority or those over 65 or anything else; it covers all people. And the example Mr. Monroe told about being put in jail, I know a lot of adults who've been put in jail and never known what they were charged with. And, I really don't see where this serves any useful purpose.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, this does serve a very definite and useful purpose. There is a constitutional controversy throughout this land as to whether or not the basic protections of the Bill of Rights shall be applied to those persons who are not adults, with respect to arrest, detention and trial. We are not, in this situation, affecting in any way the relationship of parent and child or of guardian and ward with respect to someone under the age of majority. Pay close attention to the fact that the last phrase reads, "except where specifically precluded by laws which enhance the protection for such person." So, as a consequence, what we are doing by this article is focusing on the basic guarantees that citizens have with respect to their person, their property and their liberty. With respect to juvenile proceedings in the State of Montana, every effort is made by our court and by our judges to make sure that these young people do have what we for ourselves consider due process. There are instances, however, where these abuses do take place by many of our juvenile authorities thinking that persons under the age of 18—or under the age of 19, at the present time, are not entitled to the basic rights that are accorded the adult citizen in a court of record. For example, there are situations where there are unlawful and unwarranted detentions. There are abuses with respect to young boys and young girls. Searches and siezures take place that violate the basic concept under our Bill of Rights.

Hearings are held under circumstances where a true defense opportunity is not provided. Things have changed in Montana and in America. Although we may say that the rule is, by regulation and by common sense, that whatever you do before you reach the age of majority shall never be used against you. Nevertheless, the investigatory processes throughout this state and this nation are such, anymore, that after you become an adult, somehow they find something perhaps that may have taken place that—during the age of minority and that can be used against you, sometimes is used against you. When that record is compared against the record of someone competing with you for a particular position or place that does not contain that type of apparent blemish, that person, of course, is going to be selected. And as a consequence, a disservice is done simply because the thinking has been, until recently, "What difference does it make if there has been some slight transgression with respect to the right of the minor? It's not going to count against him anyway." I assure you there is a very definite need for it. All we're going to do is make sure that the young boys and the young girls, the young men, the young women, prior to reaching the age of majority, are going to know that during that particular period of maturity they shall have all the basic rights that are accorded to all citizens of the State of Montana, and they are going to be better trained to be more responsible citizens. This is the least that we can do for them. We are not upsetting anything. This is not revolutionary by any means. It merely makes sure that they have the basic rights that many of us assume that they do have and which they do not have, and this will make sure that this Constitution and this Bill of Rights does apply to all citizens regardless of age. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there further discussion? (No response) Very well, the issue arises on the motion of Mr. Monroe that when this committee does arise and report, after having had under consideration Section 15, that it recommend that this section be adopted. So many as shall—

DELEGATE HARPER: I ask for a roll call vote.

CHAIRMAN GRAYBILL: Roll call vote. So many as shall be in favor, vote Aye; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Please take the vote.

Aasheim	Aye
Anderson, J.	Nay
Anderson, O.	Absent
Arbanas	Aye
Arness	Aye
Aronow	Aye
Artz	Aye
Ask	Aye
Babcock	Aye
Barnard	Aye
Bates	Aye
Belcher	Aye
Berg	Aye
Berthelson	Aye
Blaylock	Aye
Blend	Aye
Bowman	Nay
Brazier	Nay
Brown	Nay
Bugbee	Absent
Burkhardt	Aye
Cain	Aye
Campbell	Aye
Cate	Aye
Champoux	Aye
Choate	Aye
Conover	Aye
Cross	Aye
Dahood	Aye
Davis	Absent
Delaney	Nay
Driscoll	Aye
Drum	Aye
Eck	Aye
Erdmann	Nay
Eskildsen	Excused
Etchart	Aye
Felt	Absent
Foster	Aye
Furlong	Aye
Garlington	Aye
Gysler	Aye
Habedank	Absent
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Aye
Harlow	Aye
Harper	Aye

Harrington	Aye
Heliker	Aye
Holland	Nay
Jacobsen	Aye
James	Absent
Johnson	Nay
Joyce	Aye
Kamhoot	Nay
Kelleher	Aye
Leuthold	Aye
Loendorf	Aye
Lorello	Aye
Mahoney	Aye
Mansfield	Aye
Martin	Aye
McCarvel	Aye
McDonough	Aye
McKeon	Aye
McNeil	Aye
Melvin	Nay
Monroe	Aye
Murray	Absent
Noble	Aye
Nutting	Aye
Payne	Aye
Pemberton	Aye
Rebal	Aye
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Aye
Romney	Absent
Rygg	Absent
Scanlin	Aye
Schiltz	Aye
Siderius	Aye
Simon	Aye
Skari	Aye
Sparks	Aye
Speer	Aye
Studer	Aye
Sullivan	Aye
Swanberg	Nay
Toole	Absent
Van Buskirk	Aye
Vermillion	Aye
Wagner	Aye
Ward	Absent
Warden	Aye
Wilson	Absent
Woodmansey	Aye
Mr. Chairman	Aye

CLERK SMITH: Mr. Chairman, 76 have voted Aye, 11 have voted No.

CHAIRMAN GRAYBILL: 76 having voted Aye and 11 No, Section 15 is adopted.
Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move the committee recess for 15 minutes.

CHAIRMAN GRAYBILL: The motion is to recess for 15 minutes, or until 10 minutes to 4:00. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: So ordered.

(Committee recessed at 3:35 p.m.—reconvened at 3:59 p.m.)

CHAIRMAN GRAYBILL: The committee will come to order. Ladies and gentlemen, just before the recess we had finished Section 15. We're ready to start on Section 16. Very well. Mr. Clerk, will you please read Section 16.

CLERK SMITH: "Section 16. The administration of justice. Courts of justice shall be open to every person and speedy remedy afforded for every injury of person, property or character. No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Montana Workmen's Compensation laws of this state; and that right and justice shall be administered without sale, denial or delay." Section 16, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 16 of Proposal 8, it recommend that the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: The committee voted unanimously to retain this section with one important addition. The provision as it stands in the present Constitution guarantees justice and a speedy remedy for all without sale, denial or delay. The committee felt, in light of a recent interpretation of the Workmen's Compensation law, that this remedy needed to be explicitly guaranteed to persons who may be employed by one covered by Workmen's Compensation to work on the facilities of another. Under Montana law, as announced in the recent decision of Ashcraft versus Montana Power Company, the employee has no redress against third parties for injuries caused by them if his immediate employer is covered under the Workmen's Compensation law. The committee feels that this violates the spirit of the guarantee of a speedy remedy for all injuries of person, property or character. It is this specific denial, and this one only, that the committee intends to alter with the following additional wording: "No person shall be deprived of his full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation laws of this state." In other words, the committee wants to insure that the Workmen's Compensation laws of the state will be used for their original purpose—to provide compensation to injured workmen—rather than to deprive an injured worker of redress against negligent third parties, beyond his employer and fellow employees, because his immediate employer is covered by Workmen's Compensation. The committee believes that clarifying this remedy would have a salutary effect on the conscientiousness of persons who may contract out work to be done on their premises. To permit no remedy against third parties in cases where the employer is covered by Workmen's Compensation is to encourage persons with rundown premises to contract out work without improving the quality of the premises. The committee urges that this is an abuse of the Workmen's Compensation law and constitutes a misapplication of that law to protect persons who are negligent. The committee commends this provision to the Convention with the belief that it is an important, if technical, aspect of the administration of justice. Those are the remarks which are contained in the booklet. Let me amplify them by saying basically this: we feel that the right to third party action is a right which we should establish in our Constitution. It is a right which working men and women who are unfortunate enough to be injured have had for nearly 80 years in this state. We feel that it was wrongly taken away from these people by the Supreme Court decision which was mentioned. We feel that we perhaps are legislating in asking that this be written into our Constitution, but we of the committee really believe that we are acting in a judicial manner in asking that it be written in the Constitution for we feel that this Convention, perhaps, is the court of last resort for injured working men and women in Montana with respect to the third party lawsuit, and we recommend that the section be adopted.

CHAIRMAN GRAYBILL: Mrs. Bowman.

DELEGATE BOWMAN: Mr. Chairman, I wonder if Mr. Murray would yield to a question.

CHAIRMAN GRAYBILL: Mr. Murray, will you yield?

DELEGATE MURRAY: Yes, Mr. Chairman.

DELEGATE BOWMAN: Mr. Murray, I don't understand what this means and I wonder if you would explain it, giving us a specific example of what happened so we'd know what you're talking about.

DELEGATE MURRAY: Mrs. Bowman, in the case in question, the—one of the important utilities in this state hired a contractor to repair some of its powerlines and the employee of the contractor that was hired crawled up a power pole and, while there working on that pole, it broke and it fell with him to the ground and he was injured. In the case in question, because of the decision of the Supreme Court, the injured employee was limited to Workmen's Compensation benefits through the coverage of the contractor. Ordinarily, if it were not for this interpretation, the injured employee would be entitled to sue the important utility in this state and recover in addition to his Workmen's Compensation benefits. Those benefits or a portion of those benefits recovered under Workmen's Compensation, were the injured workman—did he—or were he to make a recovery against the important utility, would be paid back under the theory of subrogation to the Industrial Accident Fund of Montana. But does that explain basically what occurred, at least in this one instance?

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman. I move to delete from Section 16, page 29, commencing with the line 27, the words beginning with "No person", ending the deletion with the word "state" on line 2, page 30.

CHAIRMAN GRAYBILL: Beginning with the words "No person"?

DELEGATE HABEDANK: Yes.

CHAIRMAN GRAYBILL: On page 7 that means that you would delete lines 9 through 13, plus the word "state" on line 14.

DELEGATE HABEDANK: I would have to go back to page 7 to check that.

CHAIRMAN GRAYBILL: In other words, you move to delete the clause that covers the matter that Mr. Marshall Murray was just talking about.

DELEGATE HABEDANK: This is correct.

CHAIRMAN GRAYBILL: Very well, Mr. Habedank has an amendment that would propose to delete lines 9 to 14 on page 7—or lines whatever it was he gave on the other page—namely, this Industrial Accident or Workmen's Compensation problem.

Mr. Habedank.

DELEGATE HABEDANK: Mr. President [Chairman], ladies and gentlemen. I have no objection to this being in here if you put it in here with full knowledge of what you are doing. The decision of the Supreme Court in the Ashcraft case, which I heard and which was brilliantly argued by Mr. Dahood, made quite a change in what a lot of us thought the law was. However, they were interpreting a specific statute of the State of Montana. All that is necessary to change their interpretation is to amend the statute of the State of Montana. And you, if you adopt this particular provision, are writing into the Constitution by vote of a majority of this group what I consider to be strictly statutory matter. This may be a laudable objective, and in interpreting the Ashcraft case your attention may be directed to the Montana Power Company. I think they were the defendant, but it doesn't make any difference, because the next case that could arise in this would be a case where you, as the owner of a house, contract with somebody else to renovate that house. You require the contractor to carry industrial accident coverage. His employee is hurt. He recovers compensation under the coverage which you have required the contractor to carry and then he, in turn, turns around and sues you as the owner because of your alleged negligence in doing something in connection with this house that makes you liable to him because he was hurt because of your negligence. As I view this amendment, it will not allow anyone to recover from anyone else without negligence on the part of the person being charged. However, it will eliminate the ability of you as a owner to hire an independent contractor, require him to carry Workmen's Compensation as a part of the coverage, and be assured that you will not be sued on a third party claim. As I recall the interpretation of the Supreme Court in the Ashcraft case, and I'm sure Mr. Dahood will correct me if I'm wrong, this was—the intent of the decision or the purport of it was to prevent an employee from collecting on a third party claim from either the prime contractor or the owner. He was barred as to those two people. He can still sue as to any other third party who may be responsible for his injury. But as to the owner or the prime contractor who hires the subcontractor, he is effectively barred from his suit. Now, in 1971, I believe it was, an amendment to this act was proposed to the Legislature which would correct this opinion, this construction of the statute by our Supreme Court, and it failed to get through both houses of the Legislature. Whether that would be true in the next session, I do not know. So if you wish to include this, I think you should do it knowingly. I will disclose my interest in this thing. I am a practicing lawyer. I defend many insurance companies; I defend people who are insured; and I do not worry about either the insurance company or the people who are insured, because they pay me. And if they're sued, then I defend. But I don't think that the people who are not aware of this, who hire independent contractors to do a job and are not aware of the fact that they can be sued because they are the owner, as a result of this change, should make this change without knowing what they're doing.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I had intended not to speak on this particular section simply because I was trial counsel on behalf of Charles Ashcraft, who is permanently disabled for the rest of his life and shall never work again at his trade. I have heard this argument in the Supreme Court, an argument that had no basis in logic. I have heard it by several defense counsel who represent the best of corporate interests, that this is going to affect the individual property owner, and if he hires a contractor, he is going to be exposed to a liability that is unprecedented and they did not experience before. This is totally untrue. This section is doing nothing more, and the wording has been very precisely selected to make sure that it does nothing more, than place the injured working man back in the status that he enjoyed prior to 1971, a very basic constitutional right which he enjoyed for 80 years in the State of Montana. What happened in the Ashcraft case? The Montana Trial Lawyers Association, 150 members strong, to a man, without a dissent, believes that this Constitutional Convention must return this right to the injured working man. The unions, without exception, believe that a very basic right has been taken away from the injured working man in the State of Montana, and I understand that the corporate interests that specifically are involved in this have decided that they will not ask anyone to offer opposition to it on the Convention floor. Here is what happened in the Ashcraft case. Charles Ashcraft worked for an independent contractor having no connection with the Montana Power Company. The Montana Power Company made what we call an independent contract to have a new phase placed upon their power poles. Charles Ashcraft went 35 feet into the air. He was there for 20 minutes. Without warning, without any chance to protect himself, that pole gave way below ground level and carried Charles Ashcraft 35 feet to the ground. He was 90-some days in the hospital, but he survived; but he will not work at his trade again. What were the real facts? And keep this in mind: we are only talking about a situation where someone, through negligence, through a failure to use due care, has brought about the injury. There is nothing automatic. You may still suffer injury that is no fault of anyone else—not recover. We are not talking about that. So what were the facts? Dr. Clancy Gordon, one of the environmental advocates, was retained by us. He is a professor of botany at the University of Montana. He examined the pole and found several apparent things about it. One, it violated the statute of the State of Montana that's been on the statute books for more than 50 years, that power companies must construct their poles of cedar-quality or other standardized material. This was a lodgepole pine; it was not as required by statute. This was a lodgepole pine that has a useful life of from 17 to 20 years at the most. This pole had been in place for more than 23 years and had not been inspected for more than 5 years before the accident occurred. As a consequence, the rotting that took place took place below the ground level where the lineman, before climbing the pole, could not detect it, even though in this instance Charles Ashcraft did what he was trained to do—took a shovel and dug around the base of the pole. And as a consequence, through the negligence of the Montana Power Company, he suffered this permanent injury. Up until this decision by the Supreme Court, there was no question that in that situation the injured citizen, the injured working man had a right for proper redress. The Workmen's Compensation law, which is inadequate at best, has certain public reasons for its existence. It applies only between the employer and the employee. So clever legal counsel for the Montana Power Company, and very able, decided maybe there's some way to get away from this case. So they went back to 1965, when the Legislature amended the independent contractor law to provide that you no longer could defend on the ground that someone injured within your work premises was not entitled to Workmen's Compensation from you because he was employed by an independent contractor unless you insisted that that independent contractor carry Workmen's Compensation. The legislators that were behind that amendment were interviewed. They said, "We had no intention whatsoever of bringing about the results that were brought about by this Supreme Court decision, and you have to strain the reading of that particular section to come up with that particular position." But nevertheless, the Supreme Court—and there's a very bitter dissent on that case—a long and well-reasoned dissent—but in any event, in that case they fastened upon that as a justification and an excuse for denying this working man his remedy. When that happened—and this was after Judge Battin of the Federal Court in a similar case had ruled in Montana that this amendment does not do that—he then had to change his mind, because under federal law, he's bound by a Montana decision. The legal community was shocked. None of us were able to explain the result to the unions, to the working people. This particular right was taken away from the working man after 80 years, so promptly legislators introduced in the Senate a bill to overcome that. It passed the Senate—and I don't want to make a bicameral or a unicameral argument here. (Laughter) Promptly the lobby of the vested corporate interests went across the hall—and we determined this to be true—and made sure that it did not pass in the House. So we're now at the court of last resort. We allowed in our Bill of Rights an amendment to a clean and healthy environment. By this provision and this amendment, we are going to provide for the working man a safe environment. How does the law stand at the moment? Let me tell you how it stands. And some of the big vested corporate interests are now using independent contractors because it's reduced their cost of operation. If you have some particular tough job that you want done on your premises where there may be some danger connected with it, what you do, you go out and you hire an independent contractor. Don't have your employees in that dangerous area, because if they're hurt or there's an accident, you have to pay them Workmen's Compensation. So here's the way you do it now that we have immunity from the Supreme Court—an immunity neither intended by the people nor intended by the Legislature. What you do, you hire someone on an independent contractor basis and their employees are in this dangerous area. You don't have to worry about safety anymore. You don't have to do anything to make your premises safe. You don't have to be concerned about a safe environment for the people that are working there to benefit your interests. If they're injured, even though it's the most blatant type of negligence and carelessness, all you have to say is, "Well, we're sorry, but you have your Workmen's Compensation." Maybe you have a wife and seven children, but it's $65 a week for awhile and it's 60, and now, of course, the Legislature has raised it and you can get more money, but that's it. The Workmen's Compensation people were astounded at the decision. They sent their lawyers up to petition for rehearing. I do not think that any strong legal mind could really and truly justify what had happened, which has resulted in this, that in a particular area of industry now we need not have a safe environment for the working man. The vested corporate interest has immunity without paying anything for it. Now, how does it work if we return this basic right that the injured working man had for 80 years? Simply this. Let's assume—let's take the Charles Ashcraft situation. Charles Ashcraft is injured. He proves all these factors about the negligence of the Montana Power Company. He is paid his Workmen's Compensation, so he files what the lawyers call a third party lawsuit. The Montana Power Company then is compelled to acknowledge its obligation. They make payment. He then pays back to the Workmen's Compensation carrier. We have a provision in Montana in the Workmen's Compensation Law that provides for these actions—that the working man doesn't bring it, the Industrial Accident Board does. That law has never been changed. But how about now? That law is almost useless because of this particular interpretation. So what has happened? Regardless of all this conflict, this technicality, having to use the word "Workmen's Compensation" in this particular section, which we didn't want to do, because the minute we did it we knew that somebody would jump up and say it's legislative, but if you're going to draft something with precision and you want to make sure that all that you're doing is returning the law to what it was prior to this decision a year ago, you are compelled, sometimes, in fashioning this precise language to use language that may be seized upon by someone else as legislative. It is not. It is giving back a basic constitutional right that the citizen of Montana had prior to that particular decision. And we submit to you that by this particular provision, all that we are doing is returning that right to the working man; and how can anyone truly, justly object to doing that and only that? Now that is what happened in that particular situation. This is a constitutional provision. We say, in the first sentence, that every citizen shall have the right to full legal redress. We've taken away full legal redress in that particular area. We want to give full legal redress back in that one specific area, and that is why it is framed in that particular fashion. And we submit to you, our fellow delegates, that we are here to make sure that the rights of the citizen are protected, and this is nothing more than a step forward to make sure that they will continue to have a protection that existed for 80 years. We submit it's a constitutional matter and that the amendment is required to have a progressive Bill of Rights. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. McCarvel.

DELEGATE McCARVEL: Mr. Chairman, I rise in opposition to Mr. Habedank's amendment. I think if there's anything that should be put into this Constitution, it's the right of a working man. And I feel by this decision of the Supreme Court that he has been denied this right. So I ask the delegates to vote against the amendment and to support the committee's proposal. Thank you.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Mr. Chairman. I also support the committee's proposal. In eastern Montana there's a lot of accidents in the oilfield, and practically all the work is subcontracted out or contracted out, and we never dreamed—and Mr. Habedank, I'm sure, admits himself he never dreamed, because he's defended these lawsuits—that the Supreme Court would rule in this manner. And I support the committee's proposal because it just—it was a very bad law and it should be restored.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman, would Mr. Dahood yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I do yield, Mr. Chairman.

DELEGATE JOHNSON: Wade, I'm a cattle rancher down in southeastern Montana and we live way back in the hills, off the road. We have to maintain our own road; in fact, it's 12 miles there. We built what kind of a road we have, and we try to get by on it. We have some homemade bridges there, and this and that. As a point of clarification, I wanted to ask you, where we would contract somebody to do some work on this road and perhaps one of them with a piece of heavy equipment were doing some shaling or graveling of this or that and one of these bridges would collapse and one of those men would be hurt, then I would be responsible?

DELEGATE DAHOOD: Torrey, you would not be responsible. This amendment does nothing more than return the law to what it was about a year ago. Please recall what I said. The only time that someone would be responsible, such as the Montana Power Company, is when they are negligent, they are guilty of some type of civil wrongdoing. And this other argument that's been used, that it's going to open you up or it's going to open the owner of a residence up to some type of lawsuit, is simply, absolutely not true. That's why we fashioned this language precisely as we have. We're doing nothing more than trying to return the law to what it was prior to a year ago. Your situation would be no different than it's been in all the years gone by, Torrey.

DELEGATE JOHNSON: Thank you.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: I rise to support our committee's recommendation for this section. I admit that when it first came up from—for discussion, I was appalled at the idea of having something like this in the Bill of Rights. Since that time, I've talked to a good many lawyers. I've only run into a couple of them who don't feel that this Supreme Court case was just—was grossly unfair, that an injustice was done to the state, and that the best way to remedy it would be to put it into the Constitution. I did talk with one district judge who suggested that, given a period of time, the climate and the character of the Supreme Court probably would change and they would—probably would reverse this. But I think that in the meantime a good many Montanans are going to suffer an injustice, and I think that, for the most part, our Bill of Rights is really to prevent injustice, even to the few. I also hesitated seeing it come up on the floor, because I think that it really represents a slap in the face to our Supreme Court. And this has been discussed with a great many people. But I think that in this case, the Constitutional Convention does have an opportunity to correct a most unfortunate situation.

CHAIRMAN GRAYBILL: Very well, Mr. Habedank, do you want to close?

DELEGATE HABEDANK: Yes, Mr. President [Chairman]. You've had the matter very fairly presented to you by Mr. Dahood. As I told you in the first place, I do not particularly oppose this particular amendment, but I have been told that we lawyers are writing the Constitution, trying to slip matters into this Constitution for our own personal gain. You've had the pro and the con given to you. This is something that can be corrected by the Legislature. You have it in your power to be the supreme Legislature, as the committee has requested you to do. I leave it to you, but I do think that when you do it, you should do it knowing what you do and not accuse the lawyers of pulling the wool over your eyes.

CHAIRMAN GRAYBILL: Very well, the question is on Mr. Habedank's motion to delete lines 9 through 14. We'll have a roll call vote. So many as shall be in favor of Mr. Habedank's motion to delete this material, vote Aye; so many as are opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, please take the vote.

Aasheim	Nay
Anderson, J.	Nay
Anderson, O.	Nay
Arbanas	Nay
Arness	Nay

Aronow	Nay
Artz	Nay
Ask	Nay
Babcock	Nay
Barnard	Nay
Bates	Nay
Belcher	Nay
Berg	Aye
Berthelson	Aye
Blaylock	Nay
Blend	Absent
Bowman	Nay
Brazier	Aye
Brown	Nay
Bugbee	Absent
Burkhardt	Nay
Cain	Nay
Campbell	Nay
Cate	Nay
Champoux	Nay
Choate	Nay
Conover	Aye
Cross	Nay
Dahood	Nay
Davis	Absent
Delaney	Absent
Driscoll	Nay
Drum	Nay
Eck	Nay
Erdmann	Nay
Eskildsen	Excused
Etchart	Aye
Felt	Aye
Foster	Nay
Furlong	Nay
Garlington	Aye
Gysler	Nay
Habedank	Aye
Hanson, R.S.	Nay
Hanson, R.	Nay
Harbaugh	Nay
Harlow	Nay
Harper	Nay
Harrington	Nay
Heliker	Nay
Holland	Nay
Jacobsen	Nay
James	Nay
Johnson	Aye
Joyce	Nay
Kamhoot	Absent
Kelleher	Nay
Leuthold	Nay
Loendorf	Nay
Lorello	Nay
Mahoney	Absent
Mansfield	Nay
Martin	Nay
McCarvel	Nay
McDonough	Nay
McKeon	Nay
McNeil	Nay
Melvin	Nay
Monroe	Nay
Murray	Nay
Noble	Nay
Nutting	Aye
Payne	Nay
Pemberton	Aye
Rebal	Nay
Reichert	Nay
Robinson	Nay
Roeder	Nay
Rollins	Absent
Romney	Nay
Rygg	Nay
Scanlin	Nay
Schiltz	Nay
Siderius	Nay
Simon	Nay
Skari	Nay
Sparks	Absent
Speer	Nay
Studer	Aye
Sullivan	Nay
Swanberg	Absent
Toole	Nay
Van Buskirk	Nay
Vermillion	Nay
Wagner	Nay
Ward	Aye
Warden	Nay
Wilson	Aye
Woodmansey	Nay
Mr. Chairman	Nay

CLERK SMITH: Mr. Chairman, 14 have voted Aye, 76 have voted No.

CHAIRMAN GRAYBILL: 76 having voted No and 14 Aye, Mr. Habedank's motion does not pass. We're on Section 16. Are there other amendments? If not, members of the committee, you have before you on your—on the recommendation of Mr. Murray that when this committee does arise and report, after having had under consideration Section 16, that it recommend the same shall be adopted. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered. Will the clerk read Section 17.

CLERK SMITH: "Section 17, Due process of law. No person shall be deprived of life, liberty or property without due process of law." Section 17, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, the committee felt that the tradition-ridden phrasing of the due process of law clause should remain just as it is. Accordingly, the wording of Article III, Section 27, of our present Constitution is incorporated verbatim in this proposal. The committee received no suggestion for change in this section, and we recommend its adoption.

CHAIRMAN GRAYBILL: Is there any discussion of section—

DELEGATE MURRAY: Excuse me, Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 17 of Proposal 8, it recommend the same be adopted, with the explanation I gave.

CHAIRMAN GRAYBILL: Is there any discussion of Section 17? (No response) So many as shall be in favor of the motion of Mr. Murray, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: Section 17 is adopted. Will the clerk read Section 18.

CLERK SMITH: "Section 18, Nonimmunity from suit. The state and its subdivisions shall have no special immunity from suit. This provision shall apply only to causes of action arising after June 1, 1973." Section 18, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Section 18 of Proposal 8, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: This particular provision has, on page 31, 32, and 33, some very lengthy notes that explain what we are attempting to do here. This is the doctrine—all of us know it—the vernacular that the king can do no wrong. It is an old and archaic doctrine, but it is one which the State of Montana has adhered to except in those instances where by statute the state had said that there will not be immunity in—to the extent of insurance coverage. We feel that the doctrine of sovereign immunity, which we are attempting to do away with by this particular provision, really means that the king can do whatever he wants but he doesn't have to pay for it; and we'd like to do away with that doctrine. We are well aware of the fact that the trend in the United States is to do away with this doctrine. We are aware of the fact that a Colorado case did away with the doctrine. We recognize that we took our Constitution and some of our basic laws from Colorado, and we think that now is the time and that this is the place for Montanans to do away with this particular archaic doctrine, and we recommend the adoption of the committee report.

CHAIRMAN GRAYBILL: Mr. Habedank. Do you want the Chair to read your amendment?

DELEGATE HABEDANK: Please.

CHAIRMAN GRAYBILL: Will the clerk please read Mr. Habedank's amendment.

CLERK SMITH: "Mr. Chairman. I move to amend Section 18, line 26, page 31, by adding the following words after the word 'suit': 'for injury to a person or property'. As amended, the section would read: 'Section 18, Nonimmunity from suit. The state and its subdivisions shall have no special immunity from suit for injury to a person or property. This provision shall apply only to causes of action arising after June 1, 1973.' Signed: Habedank."

CHAIRMAN GRAYBILL: Mr. Habedank has an amendment that adds this language on page 7—it's at the end of line 20, after the word "suit": "immunity from suit for injury to a person or property".

Mr. Habedank.

DELEGATE HABEDANK: Mr. President [Chairman], I have no objection to eliminating nonimmunity for the state. However, ending where it does, I am not certain how far it may go, and I do object to going beyond injury to person or property. In North Dakota, the amendment which they adopted to be submitted to the people reads: "Suits may be brought against the state and its political subdivisions for negligent injury to a person or his property, but the Legislative Assembly may provide for reasonable limitations." That's the end of their amendment. With the provision as it has been offered by the committee and as amended by me, various bodies can purchase liability insurance, and they are given time in which to do it, June 1, 1973. And if an injury occurs, they will still not be liable unless there is negligence, but at least no one will be able to hide behind the skirts of the governmental immunity clause in prohibiting the very people that they took insurance to protect from obtaining redress for their wrongs. Limited as it is, for injury to a person or property, the Legislature is still free to make it more open if they desire to in the future. But we at least have assured the people of the State of Montana that they can sue for negligent injury.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I have reviewed with Mr. Habedank and with Chairman Dahood the amendment proposed, and the committee—and I'm sure that I speak for it—will concede to the amendment.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Will Mr. Murray yield to a question?

CHAIRMAN GRAYBILL: Mr. Murray?

DELEGATE MURRAY: I yield.

DELEGATE HOLLAND: Putting this limitation on an injury to a person—or what if, through negligence of, we'll say, the State of Montana, someone is killed and his survivors—what about their rights?

DELEGATE MURRAY: Well, I think they would still apply under this section. It's my intention that it would, yes.

DELEGATE HOLLAND: What is the purpose of the limitation by limiting the injury just to a person?

DELEGATE MURRAY: It's Mr. Habedank's amendment; you'd probably better ask that of him. I don't know what his purpose is, but I do not find his purpose to be ulterior, as far as I'm concerned.

DELEGATE HOLLAND: I know. May I ask Mr. Habedank to yield to a question?

CHAIRMAN GRAYBILL: Mr. Habedank, would you yield?

DELEGATE HABEDANK: I yield.

DELEGATE HOLLAND: I don't understand the—why you want the limitation of just injury to a person. I'm not talking about the property rights, because it would seem to me that might put into some question about the survivor's rights—for instance, a wife's rights, children's rights, the state's rights—all of those things which could arise from injuries which ultimately result in the death of the person injured.

DELEGATE HABEDANK: I believe injuries to a person which result in death are covered by our survival statutes as they are in existence now. This provides there shall be no special immunity for injury to a person or property, and I believe it would allow the same survival situation that exists before. It was certainly not my objective to eliminate that, but I think there are many instances where there may be some governmental employees do some things in connection with contractual fields that we try to stick the government for where there is a good reason to maintain our governmental immunity in those situations.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, for Mr. Holland's information, I suggest—or I offer that the Supreme Court has held that survivor action is a property right, subject to a 2-year limitation, statute of limitations, as opposed to a 3-year for personal injury, and I think that property right would take care of the problem you're talking about.

CHAIRMAN GRAYBILL: Is there further discussion of Mr. Habedank's proposed amendment?

(No response)

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Habedank's amendment, which would add to Section 18, at line 20, at the end of the line, a comma and then the words: "for injury to a person or property", so that the sentence read: "The state and its subdivisions shall have no special immunity from suit for injury to a person or property, period". So many as shall be in favor of Mr. Habedank's amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted. Is there other discussion of Section 17? Section 18 it is, excuse me.

Mr. Rygg.

DELEGATE RYGG: I'd like to ask Mr. Murray a question, if I may.

CHAIRMAN GRAYBILL: Mr. Murray, would you yield?

DELEGATE MURRAY: I yield.

DELEGATE RYGG: I'm just wondering, having been on the Appropriations Committee before, how is the state going to protect itself? Do you figure just a—do they buy insurance now and take care of this? Is that what—

DELEGATE MURRAY: In most instances, they have insurance to cover this particular thing. One problem that you might have would be with respect to the—I think of the Highway Department as a classic example of where they might not have insurance to cover a road defect, or their failure to cure some problem with respect to the highway which might lead or be such negligence as would cause an accident. And in those particular respects, they are not now covered by liability insurance and you cannot sue them, and I think that if we want to build into this state safe highways and make sure that our maintenance work is done properly and that they do not expose the citizens of Montana and elsewhere—the tourists who come into this state—to various situations which might damage or injure them, that we've got to put the pressure on them of suffering the possibility of a lawsuit, because this makes them responsible to us.

DELEGATE RYGG: One further question, if I may.

CHAIRMAN GRAYBILL: Yes, Mr. Rygg.

DELEGATE RYGG: Do you anticipate this to—extra insurance to cost the state any great deal of money?

DELEGATE MURRAY: No, I really don't, Sterling.

CHAIRMAN GRAYBILL: Is there other discussion of Section 19—Section 18 as amended?

Mr. Garlington.

DELEGATE GARLINGTON: I want, Mr. Chairman, to raise the question of what is the proper interpretation to be given to the words "state and its subdivisions". I have reference to local government units and school districts, and it seems to me that this language does not very clearly point to any particular area, and we therefore are building up controversy as to how far this immunity extends. And I think we would have an obligation in this body so to construct our language that we do not create an ambiguity—litigation if we can help it.

CHAIRMAN GRAYBILL: Do any of the committee care to speak to that matter? (No response) Very well, Mr. Wilson.

DELEGATE WILSON: Can I ask Mr. Murray a question?

CHAIRMAN GRAYBILL: Mr. Murray?

DELEGATE MURRAY: I yield.

DELEGATE WILSON: Mr. Murray, don't you feel that perhaps this is more statutory than constitutional?

DELEGATE MURRAY: Well, I guess North Dakota felt that it must be constitutional, and I have been hearing a lot about North Dakota, so I defer to their wisdom in that respect. No, I feel it's a constitutional thing.

DELEGATE WILSON: Would this then apply—if I may ask another question—

CHAIRMAN GRAYBILL: Go ahead, Mr. Wilson.

DELEGATE WILSON: Would this apply then to all political subdivisions, as Mr. Garlington has raised the question, such as school districts, school boards, and so forth?

DELEGATE MURRAY: Well, it is my understanding that it is, I think, the intent of the committee that its application shall be to all political subdivisions of the State of Montana, whatever they might be.

DELEGATE WILSON: Then this would cover—would affect fire departments?

DELEGATE MURRAY: I think so.

DELEGATE WILSON: Law enforcement agencies?

DELEGATE MURRAY: I think so. Cities, towns, irrigation districts—anything which might come within the doctrine of sovereign immunity. We're now trying to get rid of that doctrine of sovereign immunity.

DELEGATE WILSON: May I ask another question, Mr. Chairman?

CHAIRMAN GRAYBILL: Yes, Mr. Wilson.

DELEGATE MURRAY: I yield.

DELEGATE WILSON: Mr. Murray, you said it wouldn't cost very much. Isn't this kind of compulsory insurance? Would it cost a great deal of money?

DELEGATE MURRAY: Well, Mr. Wilson, I can't answer you in that respect because I'm not familiar with the cost of insurance. The situations in which the doctrine of sovereign immunity have been invoked in the State of Montana I don't suppose have been many, and I doubt very much if there really will be a great increase in insurance premiums as a result of this change. There may be some. To what extent, I can't answer.

DELEGATE WILSON: Thank you, Mr. Murray.

CHAIRMAN GRAYBILL: Mr. Wilson, the Chair would observe that many governmental units carry insurance now in spite of the doctrine of sovereign immunity.
Mr. Anderson.

DELEGATE OSCAR ANDERSON: Would Mr. Murray yield to a question?

CHAIRMAN GRAYBILL: Mr. Murray?

DELEGATE MURRAY: I will yield.

DELEGATE OSCAR ANDERSON: Would you or your committee object to the Legislature providing reasonable limitations?

DELEGATE MURRAY: I beg your pardon?

DELEGATE OSCAR ANDERSON: Would you or your committee object to the addition of the word "the Legislature may provide for reasonable limitations"?

DELEGATE MURRAY: I don't think we would object to that particularly. That's in the North Dakota Constitution, is it not?

DELEGATE OSCAR ANDERSON: Yes.

DELEGATE MURRAY: The one that Mr. Wenstrom sent you? (Laughter)

DELEGATE OSCAR ANDERSON: Mr. Chairman.

CHAIRMAN GRAYBILL: Yes, Mr. Anderson.

DELEGATE OSCAR ANDERSON: Being a nonlawyer, I'm not going to make a motion, but I sure wish somebody else would.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I think we should point out that there might be some question with respect to the extent of the language "the state and its subdivisions". I think Delegate Garlington does bring up a point. What our committee is really concerned about is making sure that an antiquated doctrine that had no place within American jurisprudence in the first instance is removed from the face of justice in the State of Montana. The federal government did it quite some years ago. They passed the federal tort claims act to cover any negligent activity by any servant of the federal government, and they passed the Tucker Act to make sure that in contract matters this particular defense of sovereign immunity, which should have no place in a democracy, could not be used against someone that was entitled to have full justice and full legal redress. The way the situation stands in the State of Montana at the present time, unless there is some type of insurance coverage, a governmental servant could run you down in the street, be drunk at the time he does it, go through a red stoplight, and you can't recover a dime for your hospital and medical bills and for the support of yourself and your family during your disability. Now surely, no sound-thinking individual can say that that is right. And the intent of the committee is to make sure that in Montana we take it away by constitutional command. In the last several decades, 16 states have done it through Supreme Court decision; several have done it through constitutional amendment. There isn't a legal scholar that I have read over the past two decades of practicing law, and I'm sure my colleagues here on Convention floor will agree, that can justify the retention of that particular doctrine that the king can do no wrong in Montana and in any of the states of this particular democracy. So it is our intention to remove this particular doctrine because the Supreme Court, when it's been confronted with this particular issue, has said, "Well, we have had it all these years and we don't want to remove it. Let the Legislature do it." The Legislature will come back and say, "Well, let the Supreme Court do it, because, after all, we didn't construct this doctrine—the courts did it years back when they paid so much homage to the law of England that they thought they had to bring it over the seas here to the North American continent." So they keep passing the responsibility back and forth. We have an opportunity now, as long as in Montana no one else will accept it, to make sure that we have full redress and full justice for all of our citizens. So that way, we reduce public dissatisfaction with the administration of justice and make sure that every citizen of Montana has the full right to which he's entitled. We submit it's an inalienable right to have remedy when someone injures you through negligence and through a wrongdoing, regardless of whether he has the status of a governmental servant or not. That is the committee explanation. We think if it's adopted in the language in which it is submitted, that it's going to tell our Supreme Court we do not want that doctrine in the State of Montana. Let's judge cases on the merit, on the principle of what's fair and what's right between man and woman in an organized society. We submit the present language will convey that message. That will be our epistle to justice in the State of Montana and will improve its administration for the benefit of all of us. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: The question arises on Mr. Murray's motion that when this body arises and reports, after having had under consideration Section 18 as amended, that the same shall be recommended for adoption. So many as are in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it, and it's adopted. Will the clerk read Section 19.

CLERK SMITH: "Section 19, Habeas corpus. The privilege of the writ of habeas corpus shall never be suspended." Section 19, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE R.S. HANSON: I move that when this committee does arise and report, having had under consideration Section 19 of Proposal Number 8, it recommend the same be adopted.

Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE R.S. HANSON: The present language is shown in our Bill of Rights: "The privilege of the writ of habeas corpus shall never be suspended." In the present section, Number 21, we have deleted the words "unless in case of rebellion or invasion, the public safety requires it". The committee felt that we would be accomplishing what we wanted to by cutting out the last words. We hope that you will move for the amendment—or the adoption of this section.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman, I feel I especially have to rise in support of this Section 19. The cowboys down in Powder River country just love those words "habeas corpus". (Laughter)

CHAIRMAN GRAYBILL: Those cowboys are learning a lot of new language, too, aren't they, Torrey? (Laughter) All right, is there discussion of Section 19? Members of the committee, you have before you, on the motion of Mr. Hanson that when this committee does arise and report, after having had under consideration Section 19, that it recommend the same do be adopted. All in favor of Section 19, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: All opposed, No.

(No response)

CHAIRMAN GRAYBILL: Section 19 is adopted. Will the clerk read Section 20.

CLERK SMITH: "Section 20, Initiation of proceedings. Criminal offenses of which courts inferior to the District Courts have jurisdiction shall be prosecuted by complaint. All criminal actions in District Court, except those on appeal, shall be prosecuted by information, after examination and commitment by a magistrate or after leave granted by the court, or shall be prosecuted by indictment without such examination or commitment or without such leave of the court. A grand jury shall consist of seven persons, of whom five must concur to find an indictment. A grand jury shall only be drawn and summoned when the district judge shall, in his discretion, consider it necessary and shall so order." Section 20, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE R. S. HANSON: I move that when this committee does rise and report, having had under consideration Section 20 of Proposal Number 8, it recommend the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE R.S. HANSON: In this section there have been a few changes in words. They are almost identical to our present Section 8, and the committee voted unanimously that this section, which stipulates the method of initiating criminal proceedings, should remain as—with one minor change. The phrase 'justice's courts and municipal and other courts' was deleted as unnecessary and redundant wording. The remainder of the section is verbatim rendering of the Article III, Section 8, providing for prosecution by complaint, information and indictment. It is noted that these fixed aspects of the initiation of proceedings are part of the basic procedural rights framework established to maintain the accusatorial nature of the system of criminal justice. No delegate proposals were received on this provision.

CHAIRMAN GRAYBILL: Mr. Melvin, you have an amendment. Do you want the clerk to read it?

DELEGATE MELVIN: If you please, Mr. Chairman.

CHAIRMAN GRAYBILL: Will the clerk please read Mr. Melvin's amendment.

CLERK SMITH: "Mr. Chairman. I move to amend the Bill of Rights Committee Proposal, Section 20, page 35, line 9, by deleting the word 'seven' and inserting the word 'eleven' and on line 10 by deleting the word 'five' and inserting the word 'eight'. Signed: Melvin."

CHAIRMAN GRAYBILL: Mr. Melvin has an amendment to Section 20 which appears on page 8. He wants to change the numbers of the grand jury so that they are 11 and 8 must concur in the indictment.
Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman and delegates, the sole purpose of the amendment is to increase the number of grand jurors so that a better chance of the jury arriving at some strong leadership in order to perform the function which they're chosen to do. Now, in 17 years I've observed the two grand juries perform in my particular area—one with regard to a police scandal; the other involved two murders. Especially with regard to the police scandal, that grand jury performed very well and information was obtained during that grand jury hearing that would not otherwise have been obtained. Now, for the layman, I think that it's been so seldom that grand juries have been used in Montana that you should be aware that a grand jury is called only at the request of a District Judge. They assemble at the county seat, and their powers are broad. They're described in Chapter 14 of the Montana Codes, and they can go into all areas of county and city government and functions of the county offices, as well as specific crimes. I'll not belabor the point other than to point out that it's because of the fact that I feel that from 11 people, that stronger leadership could be obtained to conduct this function that I'm asking for this amendment. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE R.S. HANSON: Mr. Chairman, I don't think that the committee has any reason to oppose this amendment, but I'd like to have Mr. Dahood speak on it for a minute.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. Delegate Melvin was gracious enough to discuss this with me, and he has had experience with a grand jury in the State of Montana, and I daresay there are very few lawyers on this Convention floor that have had any experience with it. Let me tell you why. In the Federal Courts, under the federal system of justice, before anyone can be charged with any serious crime or a felony type of crime, it must be upon presentment to the grand jury and the return of a true bill. In Montana we have an alternative provision whereby the prosecuting officer can file against an individual and accuse him of a felony type crime by what we call an information. Although we do have a grand jury procedure, it is almost never used. So it has come down to this in the State of Montana: a grand jury is used on rare occasions when some matter of great concern to the community has arisen and there is some question as to what action should be taken by the county prosecutor, and upon request to the presiding judge of that particular district, a grand jury may be called. It is seldom ever done; and since we have the experience of Delegate Melvin with respect to two grand juries that were called in the 18th Judicial District and he believes that a larger number should serve in that particular instance, we certainly will not quarrel with that opinion. I think there is a rational basis for his amendment, and I think having a larger number in a matter of that type of pressing importance certainly commends itself to us. I think it will serve the purpose for calling a grand jury and for that reason, on behalf of the Bill of Rights Committee, we have no objection to the amendment as presented. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well, the issue arises on Mr. Melvin's amendment that we insert, in Section 20, the numbers "11" for a grand jury, with the number of "8" to concur for the indictment. So many as shall be in favor of that motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: The Ayes have it, and Mr. Melvin's motion is adopted. Is there other discussion of Section 20? (No response) Very well, members of the committee, you have before you for your consideration Mr. Hanson's motion that when this committee does arise and report, after having had under consideration Section 20 as amended, that the same be recommended for adoption. All in favor of that motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: It's adopted.
Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move the committee rise, report progress, and ask leave to sit again.

CHAIRMAN GRAYBILL: Very well, the motion is to rise and report progress. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: The committee will rise.

(Proceedings moved from Committee of the Whole into Convention. President Graybill in Chair.)

PRESIDENT GRAYBILL: Will the clerk please read the Committee of the Whole report.

CLERK SMITH: "March 8th, 1972. Mr. President: We, your Committee of the Whole, having had under consideration Report Number 8 of the Committee on Bill of Rights, recommend that the committee rise and report progress and beg leave to sit again. Signed: Graybill, Chairman."

PRESIDENT GRAYBILL: Members of the committee, unless objection is heard, we will not read the entire report.
Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move the Convention adopt the Committee of the Whole report.

PRESIDENT GRAYBILL: The motion is to adopt the report of the Committee of the Whole. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.
(No response)

PRESIDENT GRAYBILL: So ordered. May we be on Order of Business Number 11, Announcements.
Mr. Champoux.

DELEGATE CHAMPOUX: Education Committee, tomorrow morning, please, at 8:30, in the committee room. Thank you.

PRESIDENT GRAYBILL: Oh, I'm trying to remember what it is Mrs. Babcock wants me to announce. It's that women who might be interested in attending the prayer luncheon on Saturday should make arrangements for that. The prayer breakfast starts at such a late hour that we would have to abandon Saturday morning, but the prayer luncheon will start at noon. And we will probably work till at least noon or a little past on Saturday and give anyone who wants to go to that until about 1:30, so you probably can attend the prayer luncheon if you want to. The prayer breakfast would take from 9:00 till 11:00, and we'll be in session at that time. So if you're interested in the prayer luncheon, please make your arrangements. Are there other announcements? The Chair would like to invite you all to still come to dinner tonight. Mr. Murray, do you have another motion?

DELEGATE MURRAY: Mr. President, I move that the Convention adjourn until the hour of 9:00 a.m., March 9th, 1972.

PRESIDENT GRAYBILL: The motion is to adjourn until 9:00 tomorrow morning. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

(Convention adjourned at 5:05 p.m.)

March 9, 1972
9:10 a.m.

Forty-First Day

Convention Hall
Helena, Montana

PRESIDENT GRAYBILL: The Convention will be in order. If you'll all rise, Mr. Harper will lead us in the invocation this morning.

DELEGATE HARPER: There's a familiar passage of Scripture that says, "This is the day that the Lord has made; let us rejoice in it and be glad." Let us pray. Our Father, let us live this day in the knowledge that it may be the only day we have here. Let this be the day when our wishes are in accord with Your will. Let this be the day when we measure ourselves not against each other, nor even against ourselves of the past, but against the measuring rod of humanity we saw in Jesus. And stand us up against the needs and the possibilities of future generations until we see our own lives here in proper perspective and are made humble enough to serve and confident enough to rejoice in this, the day You have made for us, together. Amen.

PRESIDENT GRAYBILL: We'll take attendance this morning by voting Aye on the voting machines.

CLERK HANSON: Mr. President. May Delegates Bowman, Cate, Garlington, Mahoney be excused, please, and Delegate Furlong?

PRESIDENT GRAYBILL: Very well. Those—Furlong does not need to be excused yet. Those other delegates are in Great Falls for the television show. Are there other absences?

CLERK HANSON: Delegate Anderson, Delegate Artz, Delegate Bates, Delegate Dahood, Delegate Holland, Delegate McKeon. Delegate Anderson, Delegate Bates, Delegate Dahood, Delegate Holland, Delegate McKeon. Delegate Anderson, Delegate Bates, Delegate Dahood, Delegate Holland, Delegate McKeon.

PRESIDENT GRAYBILL: Very well. Will you take the attendance.

Aasheim	Present
Anderson, J.	Present
Anderson, O.	Absent
Arbanas	Present
Arness	Present
Aronow	Present
Artz	Present
Ask	Present
Babcock	Present
Barnard	Present
Bates	Absent
Belcher	Present
Berg	Present
Berthelson	Present
Blaylock	Present
Blend	Present
Bowman	Excused
Brazier	Present
Brown	Present
Bugbee	Present
Burkhardt	Present
Cain	Present
Campbell	Present
Cate	Excused
Champoux	Present
Choate	Present
Conover	Present
Cross	Present
Dahood	Absent
Davis	Present
Delaney	Present
Driscoll	Present
Drum	Present
Eck	Present
Erdmann	Present
Eskildsen	Present
Etchart	Present
Felt	Present
Foster	Present
Furlong	Present
Garlington	Excused
Graybill	Present
Gysler	Present
Habedank	Present
Hanson, R.S.	Present
Hanson, R.	Present
Harbaugh	Present
Harlow	Present
Harper	Present
Harrington	Present
Heliker	Present
Holland	Absent
Jacobsen	Present
James	Present
Johnson	Present
Joyce	Present
Kamhoot	Present
Kelleher	Present
Leuthold	Present
Loendorf	Present
Lorello	Present
Mahoney	Excused
Mansfield	Present

Martin	Present
McCarvel	Present
McDonough	Present
McKeon	Absent
McNeil	Present
Melvin	Present
Monroe	Present
Murray	Present
Noble	Present
Nutting	Present
Payne	Present
Pemberton	Present
Rebal	Present
Reichert	Present
Robinson	Present
Roeder	Present
Rollins	Present
Romney	Present
Rygg	Present
Scanlin	Present
Schiltz	Present
Siderius	Present
Simon	Present
Skari	Present
Sparks	Present
Speer	Present
Studer	Present
Sullivan	Present
Swanberg	Present
Toole	Present
Van Buskirk	Present
Vermillion	Present
Wagner	Present
Ward	Present
Warden	Present
Wilson	Present
Woodmansey	Present

CLERK HANSON: Mr. Chairman, 91 delegates present, 4 excused and 5 absent.

PRESIDENT GRAYBILL: Very well. A quorum is present. The journal may so show. Order of Business Number 1.

CLERK HANSON: "Mr. President. We, the Committee on Style, Drafting, Transition and Submission, transmits revisions of the Judiciary Article for consideration of the Convention. John M. Schiltz, Chairman; William A. Burkhardt, Vice-Chairman."

PRESIDENT GRAYBILL: The Judiciary Article is before you on your desks from Style and Drafting. I might point out to you that it is very possible that we would get to that this afternoon and we might want to waive the time. So if you have any time at noon, you might want to look at the Judiciary Article on style and drafting. We may be getting to that before tomorrow. Order of Business Number 2, Reports of Select Committees.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 3, Communications.

CLERK HANSON: "Helena, Montana; March 8th, 1972. Honorable Leo Graybill, Jr., President, Montana Constitutional Convention; Capitol, Helena, Montana. Dear Mr. President: In accordance with the provisions of Section 15(2), Extraordinary Senate Bill Number 6, Chapter Extraordinary Number 1, Laws of Montana 1971, the license of Joel L. Curtis, license number 84-72, has been reinstated as of March 8th, 1972. Sincerely yours, Frank Murray, Secretary of State." Mr. President.

PRESIDENT GRAYBILL: Yes. Order of Business Number 4, Introduction and Reference of Delegates Proposal.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 5.

Mr. Murray.

DELEGATE MURRAY: Mr. President. I move that we postpone consideration of business under Order of Business Number 5 until the Convention again reaches that Order of Business, which I hope will be later in the day. And, at that time, we should have the Legislative, final little typewritten report for us so that we'll know finally what we're voting on. And we can take up General Government 1 and 2 and Legislative.

PRESIDENT GRAYBILL: Yes, members of the Convention, the Chair is advised that the Legislative reprint has not yet reached your desks, but it is due and we expect it this morning. So we'd rather do all of those at once. All those in favor of Mr. Murray's motion to pass Order of Business Number 5, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered. Order of Business Number 6, Adoption.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 7, Motions.
Mr. Rygg.

DELEGATE RYGG: Mr. Chairman [President]. I move that this Convention request from the Department of Revenue a fiscal note forecasting the cost of added services to be performed by state and local governments as included in the first eight proposals.
Mr. Chairman.

PRESIDENT GRAYBILL: Mr. Rygg.

DELEGATE RYGG: I have no other motive for this than my own curiosity. I guess I feel somewhat the same as if my wife and I had both been on a trip and we'd been spending a lot of counter checks, and now it's time to go down to the bank to see if they'd add them up for me.

PRESIDENT GRAYBILL: Very well. The Chair understands the sense of Mr. Rygg's motion to be that he'd like to ask the state fiscal people for a fiscal note as to what may be the results of what we've done so far in the Convention. If you pass this motion that we ask for that, it is the Chair's intention to refer the matter to Resolutions—so that the Rules and Resolutions—so that the Rules Committee can draw an appropriate resolution to the governmental—or the state agencies so that they will act on more than just our motion. But if you agree with Mr. Rygg that we should ask them for a fiscal note, then vote Yes; and if you don't agree, vote No. And we'll put his motion. Is there discussion?
Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman [President]. Will the roll please show me as present.

PRESIDENT GRAYBILL: The roll will show Mr. Holland as present, and the roll will show Mr. McKeon as present; and the roll show Mr. Dahood is present.
Mr. Champoux.

DELEGATE CHAMPOUX: Mr. President. Who, specifically, are we going to direct this inquiry to, please?

PRESIDENT GRAYBILL: Mr. Rygg.

DELEGATE RYGG: The Department of Revenue. The reason for putting it in the Department of Revenue is that they have the personnel over there who are able to do this. It's quite a normal procedure in the Legislature for every bill that needs an appropriation that we have a fiscal note, and they come back with a figure. I admit they can't always give you the proper figure. They'll have to say, "Well, if you have a hundred members, it's going to be less than if you have a hundred and fifty." But usually they're pretty good about putting down there the approximate reasons for it and giving an alternative of what it will be. So it would just be to the Department of Revenue, and I believe they have a staff who can adequately do that.

PRESIDENT GRAYBILL: Are there other questions or discussion of Mr. Rygg's motion? All in favor of asking the Department of Revenue for a fiscal note on the results of our Convention so far, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No.
(No response)

PRESIDENT GRAYBILL: The Ayes have it, and the Chair will refer the matter to the Rules and Resolutions Committee; and Mr. Rygg if you'll work with them to work up a suitable resolution, which we can probably pass tomorrow, and couch it in language so that we can get this accomplished. Are there other resolutions or motions?

CLERK HANSON: None, sir.

PRESIDENT GRAYBILL: Order of Business Number 8, Unfinished Business. None?

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 9, Special Orders.

CLERK HANSON: None.

PRESIDENT GRAYBILL: Order of Business Number 10.
Mr. Murray.

DELEGATE MURRAY: Mr. President. I move the Convention resolve itself into Committee of the Whole for the consideration of business under General Orders.

PRESIDENT GRAYBILL: Mr. Murray's motion is to resolve this Convention into Committee of the Whole. All in favor, say Aye.

DELEGATES: Aye.

PRESIDENT GRAYBILL: Opposed, No. (No response)

PRESIDENT GRAYBILL: So ordered.

(Committee of the Whole)

CHAIRMAN GRAYBILL: Mr. Clerk.

CLERK HANSON: March 9th, 1972. The following committee proposals are now on General Orders: Bill of Rights, Education, Public Health, Local Government, General Government, Style and Drafting Report Number 5.
Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. When we completed our work yesterday afternoon, we were—we had just completed Section 20 of the Bill of Rights, so we're on Section 21. Will the clerk please read Section 21.

CLERK HANSON: "Section 21, Bail. All persons shall be bailable by sufficient securities, except for capital offenses, when the proof is evident or the presumption great." Mr. Chairman, Section 21.

CHAIRMAN GRAYBILL: All right. The word is "sureties" in line 9.
Mr. Hanson.

DELEGATE HANSON: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 21 of the Bill of Rights Number 8, it recommend the same be adopted as amended.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Hanson.

DELEGATE HANSON: The committee voted unanimously to retain this section unchanged. As it stands, the section announces that all persons are bailable except in certain capital offenses. No delegate proposals were received on this provision.

CHAIRMAN GRAYBILL: Is there discussion of Section 21? Very well. You've all heard the motion of Mr. Hanson that this committee recommend the adoption of Section 21. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Will the clerk read Section 22.

CLERK SMITH: "Section 22, Excessive sanctions. Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishments inflicted." Section 22, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Sullivan.

DELEGATE SULLIVAN: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 22 of Proposal 8, it recommends that the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Sullivan.

DELEGATE SULLIVAN: The Committee voted unanimously that this section be retained unchanged. It is thought that the section provides the Judiciary and the Legislative adequate flexibility to apply the principle that there shall not be excessive bail, excessive fines, or cruel and unusual punishments. No delegates proposals were received on this provision. Mr. Chairman.

CHAIRMAN GRAYBILL: Is there discussion of Section 22? Members of the committee, you've heard Mrs. Sullivan's recommendation that Section 22 be adopted. All in favor of that, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Will the clerk read Section 23.

CLERK SMITH: "Section 23, Detention. No person shall be imprisoned for the purpose of securing his testimony in any criminal proceeding longer than may be necessary in order to take his deposition. If he can give security for his appearance at the time of trial, he shall be discharged upon giving the same. If he cannot give security, his deposition shall be taken in the manner prescribed by law and in the presence of the accused and his counsel or without their presence if they shall fail to attend the examination after reasonable notice of the time and place thereof. Any deposition authorized by this section may be received as evidence on the trial if the witness shall be dead or absent from the state." Section 23, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 23 of the Bill of Rights Proposal Number 8, it recommends that the same be adopted.

Mr. Chairman. This section is exactly the same as Article III, Section 17, in the present Constitution. The provision prohibits unreasonable detention of witnesses and prescribes in detail the procedure for securing testimony in the event the witness cannot be procured for the trial. No delegate proposals were received on this particular section. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. President [Chairman]. Would Mr. Dahood yield to a question?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE HABEDANK: In connection with Section 23, Mr. Dahood, was any consideration given by your committee to enlarging the use of the deposition so that it could be used under circumstances where the witness was not absent from the state or dead? It occurs to me that there are many instances which would arise, where a deposition has been so taken, that the evidence is necessary, the witness cannot be located. He may be ill, many other things.

DELEGATE DAHOOD: Well, Mr. Habedank, that was discussed to some extent, not any great extent; but we felt that the Montana Civil Procedure Act would take care of that under the discovery Sections, 26 through 37. And we thought that the deposition sections contained therein covered those situations that you refer to now.

DELEGATE HABEDANK: Mr. Dahood —may I ask Mr. Dahood another question?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE HABEDANK: Did you consult with any prosecuting attorneys—I have never been one—as to whether or not they have ever experienced difficulty because of the limitation on the use of this deposition?

DELEGATE DAHOOD: Mr. Habedank, we did not consult with any prosecuting attorney. Again, we have the new Criminal Code which we think, in certain sections, covers that situation. And we did not see that there was any particular reason or need for any constitutional change. That is why we stayed with the section as it is.

DELEGATE HABEDANK: Thank you, Mr. Chairman.

DELEGATE DAHOOD: Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there other discussion?

Mr. Kelleher.

DELEGATE KELLEHER: I just delivered a proposed amendment to the clerk, Mr. Chairman. It simply would strike the last sentence off—and I move to strike the last sentence of Section 23, starting at lines 24 through 26 on page 8. Mr. Chairman.

CHAIRMAN GRAYBILL: Do you want the clerk to read your—

DELEGATE KELLEHER: I don't think it's necessary.

CHAIRMAN GRAYBILL: All right. Mr. Kelleher has an amendment.

DELEGATE KELLEHER: The reason—Mr. Chairman—

CHAIRMAN GRAYBILL: Yes, just a minute till I write it down here. Explain—you want to strike the last sentence?

DELEGATE KELLEHER: Only the last sentence.

CHAIRMAN GRAYBILL: The last sentence begins—

DELEGATE KELLEHER: "Any deposition authorized by this section may be received as evidence on a trial if the witness shall be dead or absent from the state."

CHAIRMAN GRAYBILL: All right. Mr. Kelleher has proposed an amendment to Section 23 which would strike the last sentence from the language of Section 23: "Any deposition authorized by this section may be received as evidence on a trial if the witness shall be dead or absent from the state."

Mr. Kelleher.

DELEGATE KELLEHER: The reason—the primary reason for striking this, Mr. Chairman, is that I believe it clearly violates Section—Amendment 6—of the federal Constitution which, as you know, has been incorporated into Article XIV. The matter is well covered under Section 95-1802. In fact, I think the whole section is constitutional, but it is a rather important matter, so I did not move to strike the whole section. At page 171 of the Bill of Rights Committee's own report—the very fine work done by Mr. Applegate—he points out the fact that in Pointer versus Texas, that was a 1965 case, the 6th Amendment was put in the 14th Amendment—and, of course, that was written many years after our own—original Constitution was drafted—that the government cannot use such a deposition. The deposition may be used by the defendant. And we could amend to put that—to allow that in the last sentence, but that's already included in our statutes, so I see no need for it. And this is very similar to Rule 15 of the Federal Rules of Criminal Procedure; and in Moore's *Federal Practice,* the commentary reads: "The government has no right to move to take a deposition under Rule 15. The use of depositions in criminal cases has always raised questions of possible infringement of a defendant's 6th Amendment right to confront witnesses against him. This was no doubt the reason for the Supreme Court's rejection of the original advisory committee's proposal to permit government depositions, as well as for the rejection of a similar provision contained in a proposed amendment." Now, I realize, as I said, that it's in the present Constitution, but that amendment—that portion of it was declared unconstitutional. If the committee wants to allow the defendant, as it is in the federal rule, to use these depositions, I have no objection to that, but just that—so long as the government in a prosecution cannot use the deposition because of the 6th Amendment. And that matter, incidentally, is very well covered in the committee's following section, Section 24, the fourth line at the bottom of page 8, where we read: "to meet the witnesses against him face to face". Even though the deposition has been taken, that—the criminal defendant still has a right to have that deponent—have the jury examine his demeanor on the witness stand. Thank you.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. We do not object to the motion by Delegate Kelleher, but I think I should explain some of the problems that have been discussed, for the benefit of the nonlawyer delegates. The word "deposition" simply means that you take the testimony of a witness, under oath before a court reporter, and then that testimony is transcribed. When you have a material witness who is absolutely essential to the case for the state or the prosecution, it sometimes becomes necessary to preserve that testimony for the benefit of the state by taking what is called a deposition. Again, nothing more nor less than the testimony of that witness, under oath, by question and answer. The Montana Criminal Code is going to protect the defendant, because that deposition can only be taken upon proper notice. And one of the bulwarks of liberty under our system of law is the right of the defendant to confront the witness who may stand against him and through his counsel to cross-examine that witness. That right is provided when a deposition is taken. In other words, the state is represented by the prosecuting attorney, the questions are asked of that particular witness. Those questions are written down by the court reporter, as well as the answers; and then the attorney on behalf of the defendant will ask questions and they are written down along with the answers. And any objections with respect to any questions that may be wrong are then decided by the judge at a later time. Since these matters are covered within our Montana Criminal Code and, with respect to any other matter that may relate to any civil procedure, also covered by the Montana Civil Procedure Code, there is really no problem. The constitutional guarantees are going to be applied. We did not take that sentence out, because we were quite concerned about making sure that, wherever we could, we left the basic rights of the people in the same language in which they were framed in 1889, where the language was still correct and was still proper and was still reflective of society's current needs to have these particular rights in the Bill of Rights. With that explanation, I again state that the Bill of Rights Committee has no objection to the amendment to delete as proposed by Delegate Kelleher. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Dahood. I wonder if the—if you'd yield to a question from the Chair.

DELEGATE DAHOOD: I do yield.

CHAIRMAN GRAYBILL: On line 21, it says—it says in line 20 that the deposition of such a witness must be taken in the presence of the accused or his counsel or without their presence if they shall fail to attend the examination after reasonable notice of the time and place thereof. And then, down in your next section—Section 24—it says "to meet the witnesses against him face to face". Assuming a situation where a criminal—where a person might be charged but not yet apprehended, would you expect this person to come in and appear for the deposition? And if you don't really expect that, then how are you going to let him meet the witnesses face to face? In other words, I'm bothered by Mr. Kelleher's point that in some cases, the defendant—it isn't just a matter of notice like in a civil case. This defendant may have good reason not to appear, and yet he wouldn't be able to meet his accuser face to face as you are requiring in the next section.

DELEGATE DAHOOD: In my judgment, Mr. Chairman, I think it is absolutely essential that the person against whom that deposition is to be used does appear, under circumstances where he is before the court under process of court. I should think that in the situation that you have just stated, that that particular defendant is not yet under the control of the court by effective service of process, and therefore in my judgment, he would not be bound by any deposition taken under those circumstances.

CHAIRMAN GRAYBILL: That may be; that doesn't appear to me from lines 22 and 23.

DELEGATE DAHOOD: Well, that would be my opinion: that the only time that you can use a deposition is when there has been fair process, just process, due process with respect to that defendant. There's some technical reason as to why he is not within the power and jurisdiction of the court because he has not been arrested and arraigned. Under those circumstances, I do not think that this particular type of deposition procedure can be effective against him. And that is our thinking and my thinking as Chairman of the committee. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there other discussion of Section—of Mr. Kelleher's amendment to Section—proposed amendment to Section 23?

Mr. McDonough.

DELEGATE McDONOUGH: Mr. Chairman, could I ask Mr. Dahood a question?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE McDONOUGH: Mr. Dahood. Would the last sentence be construed to be a granting power to a trial judge to allow this deposition to be entered if all the qualifications are met in the preceding section and if they are met down below; whereby if it is struck out, regardless of whether—what the 6th Amendment says, until it's specifically ruled on by the court maybe it should be left in to allow the prosecution to be able to introduce such a deposition even though, at the time of the trial, the defendant does not have the right to, you know, to be able to be present and cross-examined.

DELEGATE DAHOOD: Well, Delegate McDonough, I think you raised a good point. I think that the Montana Criminal Code, which, of course, was recently passed and which recently became law in Montana, does cover the point. But I think you're correct that this does provide a direction to the court that if these other conditions are met, then this particular deposition shall be admissible. But in my judgment, I do not think eliminating this particular section is going to change the status of criminal procedure in any respect. And perhaps, Mr. Chairman, as long as these questions are being raised and there is some doubt, perhaps then we should reject the amendment. I, from a standpoint of substance, do not think it's going to affect our present state with respect to civil procedure in the criminal area at all. But if there is some question, then I think perhaps then, even though I have no personal objection on behalf of the committee to the amendment, it ought to be rejected. We looked at this section. I looked at it; the other lawyers looked at it. There were things that we could have done, perhaps to make the wording more clear, perhaps to add something; but we did think that there were other areas of the law which, of course, were enacted by the Legislature that covered the situation. There are basic constitutional protections with respect to a defendant that must be honored at all times. But in view of the questions that have been raised, and questions by lawyers, I would think under the circumstances then, perhaps I should not agree with Delegate Kelleher and perhaps the section should remain as it is. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman]. I would feel compelled to resist the amendment. There's a lot of truth in what's been said about the fact that the federal may control, but this has been in the statutes—or in the Constitution since its inception. It's been interpreted—as interpreted the last time in 147 Montana—I don't know what year that would be, but about '65 or after that—and they held that this provision allowing for the taking of depositions does not violate Article III, Section 16, of the Montana Constitution, which provides for the right to confrontation and that this deposition taken under authority of this provision are admissible upon trial upon showing the witness is either dead or not within the jurisdiction. It's extremely important in a case, and I think I maybe can give you an example that may be of some benefit. In a recent criminal action, we had a real notorious criminal who robbed an old man down by the river, tied him up and he was going to kill him. The witnesses to the thing were from out-of-state. We're permitted to take their deposition and preserve it. The testimony is then preserved, and in some instances, you don't have the defendant himself captured. You don't even know who he is, maybe, until several years later, in some recent cases in Montana. The first part of this section permits you to take this man—material witness and hold him unless he makes bail or take his deposition. Well, the whole theory is not to hold the material witness. It's the right of another person is involved here now, is the right of a witness. He's not going to be confined till trial. You can release him, but he takes his deposition. If the defendant is unknown or in flight, it's not necessarily prejudicial; it may never be used. In the case that I'm referring to, the defendant jumped $15,000 bail and was apprehended 2 years later, hoping that the old man would die. His testimony would then be gone, the case is gone against him; or the other material witness would be gone, who had moved out of state in the construction business. So I would think that it would be a grave mistake to take away this. If the courts—if the federal courts are very jealously guarding all rights of defendants, the Supreme Court is very jealously guarding all rights of defendant, and I don't think it would accomplish what you're really seeking to do by just deleting the last portion of this. There needs to be a provision for taking of depositions of material witnesses in any criminal case, and I'm sure we want to preserve that. Thank you.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman. I didn't mean to instigate a great debate over such a minor technical matter. But in State versus Storm, our own Supreme Court held—and this is no place to conduct an education class on criminal procedure, I realize that, too—but our Supreme Court, in 1953, said it was error for the trial court to allow the testimony of a witness at the first trial to be read into evidence at the second trial. It was the right of the defendant to have the jury seen—observe the witness upon the witness stand. It was his right that the jury see how the witness acted upon direct- and cross-examination. It was his right to have the jury judge the credibility of the witness from his appearance and manner while on the witness stand. None of these rights could be had except and unless the witness met the defendant—quote—"face to face"—close quote—in the presence of the jury during the course of the trial. This is awful clear law. I thought it was. I had a murder case last summer, and the only witness was a prostitute. And they had to go find her, put her in jail, take her deposition, and she took off. The Federal Court in Pointer versus Texas—once again, the blue and white book done by Mr. Applegate—clearly sets forth that "The Supreme Court held that the right would be enforced against the state under the 14th Amendment according to the same standards to protect those personal rights against federal encroachment."—close quote. There's no doubt—by striking the last sentence, they could still take the deposition of any defendant. They could put this person in jail. And the reason I didn't strike the whole section is, as I told Chairman Dahood the other day I had planned originally to do, is that I think there's some merit to leaving the first part of the section in so that they just can't take them, lock them up, take their deposition and then forget about them. They have to release them, but even that's covered by the statute. The more I'm thinking about it, Chairman Dahood, I think maybe the whole section ought to be stricken. It's unnecessary in the Bill of Rights and it's covered by the federal—I mean, it's covered by our statutory law, in Title 95 of the *Revised Codes*. If we want to leave in an unconstitutional provision, that's all right. I'm not going to make a big issue—there's a lot of other matters that are a lot more important, Mr. Chairman, that we should be getting on to.

CHAIRMAN GRAYBILL: Very well. The issue is on Mr. Kelleher's amendment to strike the last sentence, lines 24 to 26 of Section 23. Those—that sentence saying: "Any deposition authorized by this section may be received as evidence on a trial if the witness shall be dead or absent from the state." So many as shall be in favor of Mr. Kelleher's motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: It's defeated. Mr. Arbanas, do you have an amendment to this section? No, is it 28? Very well. Is there other discussion of Section 23? If not, members of the committee, you have before you for your consideration, upon the recommendation of Mr. Foster, that when this committee does arise and report, after having had under consideration Section 23, that it recommend the same be adopted. All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed.
(No response)

CHAIRMAN GRAYBILL: It's adopted. Twenty-four, Mr. Clerk.

CLERK SMITH: "Section 24, Rights of the accused. In all criminal prosecutions, the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witness against him face to face; to have process to compel the attendance of witnesses in his behalf; and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any of the causes for which the defendant may obtain the same." Section 24, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman, fellow delegates. I move that when this committee does arise and report, after having had under consideration Section 24 of Proposal 8, it recommends that the same be adopted as amended.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: The committee voted unanimously to retain the former Article III, Section 16, unchanged. The committee felt it was an admirable statement of the fundamental procedural rights of the accused. No delegate proposals were received on this provision. This article—or this section is basically the same as Article VI in the Bill of Rights in the federal Constitution adopted in 1791. It is the same as Section 16 in our present Constitution. It has stood the test of time, and I feel that it should be adopted as is.

CHAIRMAN GRAYBILL: Is there discussion?
Mr. Habedank.

DELEGATE HABEDANK: Mr. President [Chairman]. Would Mr. James yield to a question?

DELEGATE JAMES: Yes, Mr. Habedank.

DELEGATE HABEDANK: I realize this section is identical with the present Constitution, but I've always wondered about the words on line 11 in the present Constitution, and as contained herein, "or district". I'm wondering if any consideration was given by the committee to striking those words so that a person would have to be tried in the county where the crime is committed. We don't have districts in the State of Montana, and I don't know what the framers had in mind.

DELEGATE JAMES: Well, I assume, while I'm not a—one of the "legalites", I do believe this is the county judicial district, or I suppose if we set up a district system eventually in our state, this could apply. Does that satisfy you? Thank you, Mr. Habedank.

CHAIRMAN GRAYBILL: Is there further discussion? If not, members of the committee, you have before you Section 24, upon Mr. James' recommendation that when this committee arise and reports, that we recommend it do be adopted. All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: Section 24 is adopted. Will the clerk read Section 25.

CLERK SMITH: "Section 25, Self-incrimination and double jeopardy. No person shall be compelled to testify against himself in a criminal proceeding, nor shall any person be twice put in jeopardy for the same offense previously tried in any jurisdiction." Section 25, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 25 of Proposal Number 8, it recommends that the same be adopted as amended.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman. "Self-incrimination and double jeopardy. No person shall be compelled to testify against himself in criminal proceedings, nor shall any person be twice put in jeopardy for the same [offense] previously tried in any jurisdiction." Now, there's a little change in this. If you read the comments, I believe there have been some cases here where a person could possibly be put in—tried both in state and federal jurisdiction. I must admit, Mr. Chairman, I'm kind of on the spot here, because according to my standard motion sheet, I was supposed to take 24, 28, 29 and 31. So I was sort of caught off base on this one, so I will defer to Mr. Dahood.

CHAIRMAN GRAYBILL: Mr. Dahood wrote your name on the sheet. Mr. Dahood, would you like to help him out?

DELEGATE DAHOOD: Yes, I will Mr. Chairman. I think there was a mistake in the typing. But in any event, probably it's something that I should explain, since it is a legal distinction. We have added the language "nor shall any person be twice put in jeopardy for the same offense previously tried in any jurisdiction." The phrase "previously tried in any jurisdiction" has been added. The rule throughout the United States and the several states in the past has always been that you could be tried twice for the same crime and be punished twice for the same crime, contrary to the popular conception that this cannot happen in America. It was justified by the courts in this fashion: a state is a separate criminal jurisdiction; the United States is a separate federal jurisdiction. Each is autonomous in the area of criminal practice, and each has a sovereign right to prescribe punishment for transgressions of the law within its own area of jurisdiction. So consequently, if you stole a car in Montana and drove it across a state line, you would commit two crimes. The first crime, of course, would be against the law of the State of Montana in taking the car, and technically you could be tried, convicted and sentenced to a substantial term in the penitentiary. And the federal court could then place a detainer upon you and, upon your release, since the statute of limitations would not run while you're incarcerated, then take you to a federal courtroom and have you tried and convicted and sentenced to a federal penitentiary. The Supreme Court of the United States, in reviewing the situation, has now indicated that the two—sovereignties rule is perhaps unconstitutional. We do not have a clear-cut declaration that this is going to be applied absolutely in all cases. I understand that in the federal prosecuting area, there is a somewhat unwritten policy that the federal government will no longer participate in that type of situation. We think it violates a basic fundamental right that an individual should be punished only once for whichever transgression he may be convicted of, whether under federal law or state law. It shouldn't make any difference which jurisdiction has him first. The idea, of course, is to protect society, to have him punished, to have him pay his debt to society, and after that debt has been paid in full, to return and rehabilitate himself and become a useful, functioning member of society. What this does, it provides now in Montana that if someone should commit some crime within the geographical sovereign limits of Montana and he transgresses federal criminal law at the time that he does it and the Federal Court should have him tried and convicted after indictment by a federal grand jury, that's the end of it. The State of Montana then loses jurisdiction to try him. I might tell you this: that usually, unless there's some overriding consideration, the federal prosecuting authorities usually will defer to the wishes of the state prosecuting authorities in proceeding where there is a violation of state law. We think it is a right that should be afforded constitutionally. It is fair and just, and we submit that this particular section, as amended, should be adopted. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman. That's exactly what I meant. Thank you, Wade. (Laughter)

CHAIRMAN GRAYBILL: Mr. Arbanas—Mr. Arness.

DELEGATE ARNESS: Mr. Chairman, maybe I should address my question to Mr. James, then. (Laughter). I wonder if I could ask Mr. Dahood a question.

CHAIRMAN GRAYBILL: Mr. Dahood, would you and Mr. James yield?

DELEGATE DAHOOD: I yield.

DELEGATE ARNESS: As I understand it, Mr. Dahood, this area is an area that is covered by the—or generally comes into play under the operation of what's called the Posse Comitatus Act that was enacted by the federal Congress. And where we get into problems of this kind would be a situation where an airman from Malmstrom would steal a car in Great Falls and drive it into the Air Force base. The prosecution in the federal—or in the state court for the car theft would probably not entirely satisfy the Air Force authorities, who might want to give this man a dishonorable discharge on account of the offense that he had committed against his status as an airman. How would this provision that we have in the Constitution here affect the operation of the Posse Comitatus Act and the situation that I've described?

DELEGATE DAHOOD: If you're referring to the military tribunal, Delegate Arness, let me state this: that I was an officer in the Judge Advocate General's Corps during the Korean War, served in the Defense Appellate Division in Washington, D.C., under the new Uniform Code of Military Justice, and it's a little too complicated to discuss at this point. Let me just say this: what we're trying to do here is to make sure that Montana is not going to punish someone who has already been punished for a transgression against society, whether it be the Montana society or the federal society.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: May I ask another question?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE ARNESS: You don't think, then, that the other—the operation of this, on the other hand— that is, from the other point of view— from the federal point of view, would make any difference so far as our deliberations is concerned?

DELEGATE DAHOOD: No, Delegate Arness, because we cannot do anything that is going to be binding upon the federal jurisdiction or the military jurisdiction. We can only pass a constitutional protection with respect to the operation of Montana law. Any protection within the two sovereignties, that rule, must come, for the federal area, from the federal courts; within the military area, from the United States Court of Military Appeals. We can only be concerned with Montana. We're hopeful that by doing this in Montana, we're going to balance out the trend and the movement within the federal area. As to what the military is doing, I'm not prepared to state at this time.

DELEGATE ARNESS: Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: No, that's all the questions I have.

CHAIRMAN GRAYBILL: All right.
Mr. Studer.

DELEGATE STUDER: Mr. President [Chairman]. Would Delegate Dahood yield to another question?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE STUDER: I really don't know much about this Kamikaze Quo Vadis Act or whatever it was you were talking about, but (Laughter) if a fellow stole that car like you say and went out of the state with it and the federals tried him first for transportation over the state line and I wasn't exactly satisfied that they'd prosecuted right or it'd been bungled some way and he'd been turned loose, that means that when that fellow comes back here and we have definite evidence that he'd swiped the car and everything, I can't do anything about it?

DELEGATE DAHOOD: No, not a thing you can do about it, Delegate Studer, simply because—that they've had one chance at him, that's enough. That's double jeopardy. It's just like in our state courts. Let me amplify somewhat. Let's assume that an individual is tried in state court for a criminal act and some mistake is made in the trial that allowed the jury to come back with a verdict of acquittal. You cannot then appeal to the Supreme Court, for example, and say that there was some type of procedural error or there was some evidence that we could have procured at that particular time that might have convicted him which we didn't have at that time. Once the acquittal is made, once there's a verdict of not guilty, that's the end of it, regardless of what anyone might think upon reflection.

DELEGATE STUDER: Mr. President [Chairman].

CHAIRMAN GRAYBILL: Yes.

DELEGATE STUDER: Can I ask another question?

CHAIRMAN GRAYBILL: Yes, Mr. Studer.

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE STUDER: You haven't got it exactly right. You know, they prosecuted him for going across the state line with a car; now I want to prosecute him for swiping the car. I mean, isn't that two different actions?

DELEGATE DAHOOD: Basically, Delegate Studer, the courts look at it from the standpoint that there are certain operative facts within a particular crime or a particular area of criminal activity. And that argument has been used a number of times to try and get around the double jeopardy provision, but the courts always say that if you're in the course and conduct of a particular activity to accomplish a particular act, either you are going to be tried on a number of counts at that particular time for the various laws that you may have violated in trying to achieve this particular criminal objective, or the courts and the prosecuting officials are prohibited from going back into it. And I know precisely what you have in mind. You might be able to say, "Well, even though he's only done this one thing, he's violated a number of laws." He's violated, perhaps, a law of break-in and entry, perhaps a malicious destruction of property, asportation of the property itself. Perhaps in taking the car, there was an assault and a battery. There are a number of things that could take place. If you want that individual convicted for all of those independent criminal transgressions, even though they come within the same criminal activity area, then you must allege different counts at the time that he's being tried. If you elect to go ahead just on one count, you can't say, "Well, I'll try it on one count; and if I don't make it there, then I'll come back and get the guy on the second count; and if I miss there, I'm going to get him on the third; and if I miss there I'm to get him on the fourth." That's not permitted. Have I answered your question?

DELEGATE STUDER: Yeah, but not too good. I ain't satisfied with it. (Laughter)

DELEGATE DAHOOD: All right, Delegate Studer, thank you very much.

CHAIRMAN GRAYBILL: Mr. Dahood, you've answered his question.

Mr. Loendorf.

DELEGATE LOENDORF: Mr. Dahood, would you yield?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE LOENDORF: Is your answer to Mr. Studer's question this: that where there are two acts, the act of stealing a car and the second act, the act of taking the car across the state lines, that there—may there be a prosecution under the federal law for violation of a federal law, the interstate transportation, and also a subsequent prosecution under our state law for the car theft?

DELEGATE DAHOOD: My answer is that under our amendment, that cannot take place.

CHAIRMAN GRAYBILL: Is there further discussion of Section 25? If not, members of the body, you have before you, on the motion of Mr. James that when this committee does arise and report, after having had under consideration Section 25, that it recommend the same be adopted. So many as are in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Ayes have it. Now, I postponed this until after Mr. Kelleher made his motion awhile ago, but Mr. Kelleher, would you like to make your public recantation now? (Laughter)

DELEGATE KELLEHER: Oh, it isn't that bad, Wade. I just would like the journal to show that I was on that wrong-way trip with wrong-way Harrington; I was in that airplane yesterday with you, Dan. I meant to vote on Section 14, was it, on the 18-year-olds having adult rights. I wanted to show that I thought I was voting on the amendment, and I wanted the record to show that I'm in favor of 18-year-olds being declared adults. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Now, that's number two of the two people that voted against that required roll call vote yesterday; they've both admitted they were wrong now. (Laughter) We're glad to have the record show that you two meant to be with the majority, and I'm still looking for the guy that made us go on a roll call on that one. (Laughter)

All right. Mr. Campbell, do you wish to recant?

DELEGATE CAMPBELL: No, I certainly don't. I would just like to congratulate Mr. Kelleher and Mr. Harrington and say that it was the first unanimous vote that we've ever agreed on anything. And I'm certainly happy it's on the record, and it couldn't be for a better group. So thank you very much.

CHAIRMAN GRAYBILL: All right. Now we're on Section 26. Would the clerk read 26.

CLERK SMITH: "Section 26, Trial by jury. The right of trial by jury shall be secured to all and remain inviolate, but in all cases and upon default of appearance or by consent of the parties expressed in such manners as law may prescribe, a trial by jury may be waived or a trial had by any less number of jurors than the number provided by law. In all civil actions, two-thirds in number of jury may render a verdict, and such verdict so rendered shall have the same force and effect as if all such jury concurred therein. In all criminal actions, the verdict shall be unanimous." Section 26, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 26 of Proposal Number 8, it recommends that the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: You will see, on page 39 of our Bill of Rights booklet, the comments on this section. We have kept it the same except for two changes which we feel will allow a great deal of flexibility in the law. First of all, a number less than 12 could be used in any civil or criminal trial if the defendant or the parties agree. Second of all, a jury trial could be waived by a defendant. Now, this is important especially in the smaller counties where a jury trial may come up only every 6 months. If a person cannot afford bail, he must remain in the small, often inadequate county jails until the next jury term. This would allow him to intelligently waive this right and allow him to be tried by the judge without a jury. The second—or the third change in this would require a unanimous jury verdict. As you know, under the old Constitution, a misdemeanor is two-thirds of the jury in a criminal action [and] could convict. We feel that the misdemeanor status for any criminal action should require the same standard of proof, and that is beyond a reasonable doubt. We do not feel that we can justify taking away a man's livelihood, putting a permanent criminal record on him, for anything less than a unanimous jury verdict. In the federal courts, a unanimous jury verdict is required in all civil and criminal cases. We have talked with the Montana County Attorneys Association about these two changes. They did enthusiastically accept them, and I would recommend that they be adopted by the Convention. Thank you.

CHAIRMAN GRAYBILL: Mr. Habedank, do you want to—

DELEGATE HABEDANK: Mr. President [Chairman]. In lieu of the amendment which I sent up to you, I would propose amending this section on line 5, page 39, by inserting between the words "actions" and "two-thirds", the following words: "and in criminal cases not amounting to felony".

CHAIRMAN GRAYBILL: What line was that, Mr. Habedank?

DELEGATE HABEDANK: It would be on line 5, page 39, of your particular one.

CHAIRMAN GRAYBILL: Seventeen?

DELEGATE HABEDANK: Line 5, page 39, between the words "actions" and "two-thirds".

CHAIRMAN GRAYBILL: All right. That's on line 19, page 9. In other words, Mr. Habedank proposes an amendment to Section 26, on line 19, page 9, of the first text: "In all civil actions and in criminal cases not amounting to felonies"—you wanted it "felonies", plural?

DELEGATE HABEDANK: I was using "felony", singular.

CHAIRMAN GRAYBILL: All right, to a felony, two-thirds number of the jury could render a verdict. In other words, it would have the effect of making misdemeanors in civil and criminal cases decided by a two-thirds vote, right?

DELEGATE HABEDANK: That is correct, Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Habedank, you may discuss that.

DELEGATE HABEDANK: Mr. President [Chairman]. The words I have inserted and the way it is inserted would make the present proposed Section 26 read as our prior Section 23 did. I am aware of the thinking of the majority, but I do not agree with the majority that a conviction of a misdemeanor results in a lifetime criminal record. I feel that any case in Justice Court is appealable to District Court. If a person receives what he considers an unfair trial without any other reason than that, he can appeal the case to District Court and have it tried de novo. I feel a conviction by two-thirds of a jury is just as reasonable in a misdemeanor case as two-thirds in a civil case. And I strongly urge that the Constitution as it has been in existence for all these years be retained. I have not been in connection with the County Attorneys Association, but I'm a little perplexed that they would endorse such a change wholeheartedly. I rather think they may have stated that they would accept and have to work with it, which they would have to if they required a unanimous decision. I would like to ask Mr. Davis if he would yield to a question, as he has been in this business.

Mr. Davis.

DELEGATE DAVIS: Mr. Habedank.

DELEGATE HABEDANK: Would you state your feeling as a County Attorney about a unanimous verdict in misdemeanor cases?

DELEGATE DAVIS: I don't feel a unanimous verdict is necessary. I don't know what testimony the committee heard on this particular point. I would rather have some very serious reservations, if there were too much testimony, that this created any great amount of injustice. You're dealing with the lesser type offenses. And I don't know what the County Attorneys Association position is on it, as I'm no longer a County Attorney, so I'm not too much help. Thank you.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. President [Chairman] and fellow delegates. I resist the amendment very strongly. The whole concept of trial by jury is that the individual have the protection that he be declared guilty beyond a reasonable doubt. And if, in fact, the prosecution can show that he is guilty beyond a reasonable doubt, he will, in fact, be found guilty by a unanimous decision. The question of the seriousness, to me, seems to be somewhat begging the point. Whether it's a misdemeanor or a felony, it's still a question of prosecution. It's still a question that's on your record. It's a question which society is looking to in judging you as an individual. And I submit that if any of us are going to be tried on a count, it'll probably be on a misdemeanor charge, and I think that we need the protection of being found guilty beyond a reasonable doubt. And I think that this is a very basic right as an American citizen, and I think that this is taking a step in our Constitution to preserve this important right. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman. Would Mr. Foster yield to a question?

CHAIRMAN GRAYBILL: Mr. Foster?

DELEGATE FOSTER: Yes, Mr. Chairman.

DELEGATE MELVIN: Mr. Foster, in the present Constitution, the provision is the same as the amendment. Did your committee hear any testimony that would indicate any abuses as a result of the two-thirds rule in the Constitution?

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Our committee discussed it in considerable detail, and we did not actually solicit or receive outside testimony. But in the course of our deliberations and in the course of our discussions, we felt that, in fact, a number of instances could apply where if a person had been found guilty of a misdemeanor, it could affect him in business. It could affect him in his normal life. It also could affect him if he was later charged with some other act. And we felt that it was an important right that he be found guilty beyond a reasonable doubt. We did not go out and solicit input of people that have been found guilty of misdemeanors. We didn't feel that this was necessary. But our committee did discuss it very fully, and we unanimously agreed that this provision should be in the Constitution. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Melvin.

DELEGATE MELVIN: Thank you. Mr. Chairman, I support Mr. Habedank's amendment as being the same as in the present Constitution. And it seems to me that that has served us quite adequately.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Would Mr. Dahood yield to a question?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I do yield, Mr. Chairman.

DELEGATE BERG: Under the provisions of the amendment as you have it for a misdemeanor, it would require a unanimous verdict to acquit as well as to convict for a misdemeanor. Is that true?

DELEGATE DAHOOD: A unanimous verdict to acquit?

DELEGATE BERG: Yes.

DELEGATE DAHOOD: That would be correct; otherwise you would have a hung jury.

DELEGATE BERG: And if you have a hung jury, you'd have a mistrial and the action may be tried again.

DELEGATE DAHOOD: And that is the same situation as in a felony case at the present time, Mr. Berg. That's correct.

DELEGATE BERG: This, then, would obtain on misdemeanors. So that the delegation understands it, in order to acquit, you also require a unanimous jury decision. Whereas, under the old Constitution, it took two-thirds to acquit as well as to convict.

DELEGATE DAHOOD: Except for one thing, Mr. Berg. You're placing the emphasis on the wrong side of that particular issue. We're concerned with protecting the innocent from an unjust conviction. But your reasoning, if carried out logically, is correct.

DELEGATE BERG: And unquestionably, the jury would be so instructed, would they not?

DELEGATE DAHOOD: They would have to be so instructed.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. I think the nonlawyer delegates would be interested to know that we have two requirements of proof in the system of justice that we have in the State of Montana. The heart and soul of the American protective system of criminal justice is reasonable doubt. That system exists first and foremost for the protection of the innocent. In a criminal case, you are compelled to prove that the defendant is guilty beyond a reasonable doubt, in different terms but to the same effect, to a point of moral certainty, before you cast your vote in favor of guilty. In a civil case, the requirement of proof is substantially different. All that is required in a civil case is that, upon the scales of justice, the evidence tips ever so slightly towards one party or the other for that particular party to prevail. In other words, if you have a quantum of proof that is measured as 100 percent, if you have 51 percent in a civil suit, you're entitled to the verdict of that jury. You don't have moral certainty; you don't have reasonable doubt involved. In a criminal case, the state may have proved its case by 99 percent of the evidence, but a reasonable mind, because of that 1 percent vacuum, many engender or harbor some reasonable doubt; and under our law, solidified by the wisdom of the centuries, that individual is entitled to be found not guilty. If the rule be, then, from that reasoning, that in all criminal cases, in order to have our system of justice work as we intend it to work, you have to be found guilty beyond a reasonable doubt regardless of whether it's a felony or a misdemeanor. How can you apply that reasoning to a misdemeanor case where four out of six have voted for guilt and two have not? How can you say, then, that this individual has been convicted beyond a reasonable doubt when two competent citizens have said, "We are not satisfied"? Has reasonable doubt been really satisfied in that situation? Does moral certainty really take over and command those facts to a point where we can say that, to a moral certainty, his guilt has been established when two competent citizens have said "No, we are not satisfied"? And the misdemeanor case is far more important now than it was before. We discussed this issue with respect to the rights of young people. And my colleagues can tell you of sheets that are sent to the sheriff's office, and to the prosecuting officers, from the federal enforcement authorities, from the FBI headquarters in Washington. You may think that a misdemeanor doesn't mean anything, but let me tell you this: the vast recordkeeping department of this country does note that these activities have occurred with respect to your particular mode of life, and they will show whether or not the accusation has been made and what the result of that accusation has been. And it is important. A misdemeanor is a criminal matter, even though of less severe import than a felony matter. But the reasoning behind it is the same; the spirit that protects the innocent as opposed to the guilty is the same. And if we're going to have any consistency, any logical run of reason throughout all of the law, which is what we should have, if we're going to have a sound legal criminal law system, then the mode of proof—the requirement of proof, the requirement of verdict must necessarily be the same. And I must support the position of our committee.

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman. I wonder if I could ask Mr. Dahood two or three questions in a row here.

CHAIRMAN GRAYBILL: Mr. Dahood, will you yield—

DELEGATE DAHOOD: I yield.

CHAIRMAN GRAYBILL: —for a series of questions?

DELEGATE KAMHOOT: Wade, this is for my own knowledge mainly, now, so I may know how to vote. We're talking about minor traffic violations, are we?

DELEGATE DAHOOD: We are.

DELEGATE KAMHOOT: Yes.

DELEGATE DAHOOD: Anything that constitutes a misdemeanor.

DELEGATE KAMHOOT: Yes. Then, in the case of a minor traffic violation, it is this person's right to demand a jury trial. Is this also true?

DELEGATE DAHOOD: That is true.

DELEGATE KAMHOOT: Then he does not have to hire an attorney?

DELEGATE DAHOOD: He does not, in a misdemeanor matter or in any other matter.

DELEGATE KAMHOOT: So he has no expense himself by asking for a jury trial?

DELEGATE DAHOOD: He does not.

DELEGATE KAMHOOT: I see. Yeah, well, thank you, Wade. I'd like to reiterate a little something that happened in our area. Now, I don't know very much about courts; I've never been into one, only as a witness or a juryman. We had a case where there was a young person that had already had two convictions against him for bad driving of his car. He was brought into court. He demanded a jury trial. He did not hire a lawyer. He had no expense. The jury system of selecting for these little traffic things is very loose. They have a panel, and the first six that show up, they seat them on a jury. His defense was—well, the charge was for careless driving and inconsiderate, and several other things. What he had done—and he didn't deny it at all—he would come to an intersection where there was a stop sign and he would go through it in a proper manner. Then he'd floorboard his car and spin his wheels for three-fourths of the block; then he'd set the brakes and slide for the other fourth up to the next one. He did this in three stop signs in succession. The policeman observed all of this, and he thought that this was grounds for bringing him into court and he did. He had a witness. He defended himself. The defense was solely that he'd gotten some bad gasoline in his car and it just sputtered a little once in awhile. The only way he could clear it out was tromp on the gas, give it full throttle. Then another fault had occurred that he didn't know about and the throttle would stick. So consequently, he went through three intersections, three blocks and spinning his wheels for three-fourths of the block and sliding them to the other fourth because of malfunctions; first it was bad gas, the next was that the throttle would stick. Now, this was the defense. Now, he was convicted; his driver's license was taken away for 60 days. But that was not a unanimous decision. Now, it's very easy to get someone on that jury that's going to stand up for that kid for whatever he does. So I think this is completely ridiculous. I think you're going to just turn something loose here that you don't want to live with, so I would certainly support the amendment. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Arness. First of all, Mr. Arness, the journal may show Oscar Anderson is here and may vote.

Mr. Arness.

DELEGATE ARNESS: Mr. Chairman. I have been a County Attorney and a City Attorney. And I'm not one right now, but I have prosecuted a number of these cases, including a number like Mr. Kamhoot has described. In fact, that sounds very much like the typical City of Libby case. I think that County Attorneys and City Attorneys wouldn't object to having a unanimous verdict despite what's been said here about this. I can't, of course, speak for the association presently, but it seems to me that this would be something that the prosecutor would probably be indifferent to one way or the other. And certainly, as the members of the committee have already pointed out, this is the kind of thing that the defendant would be a good deal more interested in than the prosecutor. And the defendant certainly had his representatives on the Bill of Rights Committee. I think that the reference to the County Attorneys and their approval of this section probably referred to another aspect of this section, which County Attorneys would be quite interested in and which I'd like to talk about after we get over this one. But so far as this question of two-thirds or a majority is concerned, I'm sure the prosecutor would be, for the most part, indifferent to it. This is, after all, a description of what the federal system is, and that works, and they don't have any trouble with that. I think that the amendment should be defeated, and I'd say that as a former prosecutor. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: I rise to oppose the amendment. What we're talking about is not just a traffic ticket, it's not a parking ticket, it's up to 1 year in the county jail—anything less than going to prison for, and that's a big, big crime. How many of us would want to spend 11 months in a county jail? How many of our families would ever want to have this sort of thing? We hope we never would. Now, the crime in many cases—in misdemeanor cases where I've had, that Mr. Dahood has had, that Mr. Murray has had—Mr. Murray, being a County Attorney was on the Bill of Rights Committee. We discussed all of these things. We felt that the protection is needed for the individual, not the prosecutor. We don't seem to think that the prosecutor should have the easiest life possible to put the criminal records on our citizens. Many times these misdemeanors will deprive a man of his livelihood. If it's a driver's license, if there's a close question, should he be convicted? Should he lose his driver's license? Should he lose his livelihood? And this could run into thousands of dollars a year. Should his family be forced to go onto welfare on these things? These are very serious questions; and after careful consideration, from our experience, from Marshall Murray's experience—and I've talked to the past President of the Montana Bar Association, Cale Crowley from Billings, on this. He felt it was a good idea. He supported it. The County Attorney's Association has not met on it as a group; I only talked with its President. I did talk about the entire section with him. I don't mean to infer that they're going to come out and wave the flag in support of the whole thing, certainly, at the steps of the Capitol building. But he did feel that this section, as recommended by the majority report, would be a substantial improvement over the present law. Thank you.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman] and fellow delegates. I think we should clarify one thing about how this works: in Justice Court or Police Court that Mr. Campbell appears in as he mentioned and you defend someone, if there's a two-thirds vote—verdict in favor of the defendant, he's acquitted, the case is over. The County Attorney can't prosecute further, and he's happy to have it disposed of. If there's a two-thirds verdict and the man is convicted, the state may very well just be started, because all you have to do is appeal to the District Court and you have the case all over again. I couldn't care less, if I were still a County Attorney, whether you had the two-thirds, but it's a two-edged sword. In other words, you can dispose of a lot of cases if you have a good defense and are found innocent. Then, of course, you're completely off the hook with only two-thirds. The point that Mr. Berg is trying to make: if you're found guilty, you can go right to District Court, by simply filing a notice of appeal, and have a unanimous verdict required for your conviction. It's still two-thirds in District Court on a misdemeanor. All right. Anyway, you can still appeal and get your second trial all over again on your District Court rules. But as far as the prosecution is concerned, it would give them a clear mandate. If you don't get your two-thirds, I wouldn't think that they would be pursuing the case any further. If you do get your two-thirds, they have their other right. But it's not a big issue, I don't think, as far as any of the County Attorneys or law enforcement—the problems that have been hung on the law enforcement by the Bill of Rights and the Supreme Court far exceed this. This is really secondary, so whatever action is taken on it, I wouldn't be concerned with.

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman. There's been quite a little talk about improvement of justice in our lower court. And I think that if we're going to look for some improvement, it would certainly be fair that we knead out the same kind of justice there on misdemeanors as would be the case in District Court or higher court. And I support the majority report.

CHAIRMAN GRAYBILL: Mr. Ask.

DELEGATE ASK: Mr. Chairman. I was formerly a County Attorney. I am no longer, and I don't intend to be any. But I would—should be arguing for the majority, since I'll probably be a defense attorney in some cases. But I rise to support Mr. Habedank's amendment here. In my experience as County Attorney, this two-thirds vote in Justice Court has worked very well. I've never seen any hardship that is created. I think in certain cases, I think we have to have some protection for society also. And I have seen most of these cases that go through Justice Court at the present time are DWIs—driving while intoxicated. And I don't care what kind of a case you have, you always have someone on the jury, if you talk to them afterwards—you know, what they thought of the case, et cetera—there's always maybe one or two on there that'll say, "Oh, sure he was, but let him go. You know—he'll lose his license", et cetera. I don't think society is being protected with that kind of an attitude. And I think a two-thirds vote is a protection for the defendant, either for a conviction or acquittal. If you get a two-thirds, you haven't proved your case, you're out of court. I think the amendment will put it back. And I think it's been reasonable. It would work very well, and I think we should support it. Thank you.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. May I ask Mr. Dahood a question?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE ROMNEY: Mr. Dahood, I'm not sure that I heard accurately. Did I understand you to say that in cases of accusations of violations amounting to a misdemeanor, or in convictions of same, that the data was sent to Washington to Mr. Hoover's apparatus or someplace else?

DELEGATE DAHOOD: When they investigate, they seem to pick up that information, Delegate Romney.

DELEGATE ROMNEY: Mr. Chairman, another question. Does that mean that the FBI is maintaining a dossier on all of us who are accused of a misdemeanor?

DELEGATE DAHOOD: I don't know. I've seen some of the reports that do reflect what action was taken with respect to misdemeanor matters.

DELEGATE ROMNEY: Thank you.

CHAIRMAN GRAYBILL: Is there further discussion? If not, the question is on Mr. Habedank's motion that we add, on line 19, to Section 26, the phrase: "In all civil actions", then add "and in criminal causes not amounting to a felony, two-thirds the number of the jury may render the verdict." We'll have a roll call vote. All in favor of Mr. Habedank's amendment, say Aye; all opposed, say No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Will the clerk tally the vote.

Aasheim	Aye
Anderson, J.	Aye
Anderson, O.	Aye
Arbanas	Nay
Arness	Nay
Aronow	Nay
Artz	Nay
Ask	Aye
Babcock	Aye
Barnard	Aye
Bates	Absent
Belcher	Aye
Berg	Nay
Berthelson	Aye
Blaylock	Absent
Blend	Nay
Bowman	Absent
Brazier	Aye
Brown	Aye
Bugbee	Absent
Burkhardt	Nay
Cain	Nay
Campbell	Nay
Cate	Absent
Champoux	Absent
Choate	Nay

Conover	Nay
Cross	Aye
Dahood	Nay
Davis	Absent
Delaney	Aye
Driscoll	Absent
Drum	Nay
Eck	Nay
Erdmann	Aye
Eskildsen	Aye
Etchart	Absent
Felt	Absent
Foster	Nay
Furlong	Absent
Garlington	Absent
Graybill	Nay
Gysler	Absent
Habedank	Aye
Hanson, R.S.	Nay
Hanson, R.	Absent
Harbaugh	Absent
Harlow	Nay
Harper	Absent
Harrington	Nay
Heliker	Nay
Holland	Nay
Jacobsen	Nay
James	Nay
Johnson	Aye
Joyce	Nay
Kamhoot	Aye
Kelleher	Absent
Leuthold	Aye
Loendorf	Absent
Lorello	Nay
Mahoney	Absent
Mansfield	Absent
Martin	Nay
McCarvel	Nay
McDonough	Aye
McKeon	Nay
McNeil	Aye
Melvin	Aye
Monroe	Nay
Murray	Nay
Noble	Nay
Nutting	Nay
Payne	Nay
Pemberton	Nay
Rebal	Absent
Reichert	Nay
Robinson	Absent
Roeder	Nay
Rollins	Nay
Romney	Nay
Rygg	Absent
Scanlin	Nay
Schiltz	Nay
Siderius	Nay
Simon	Aye
Skari	Aye
Sparks	Nay
Speer	Nay
Studer	Aye
Sullivan	Nay
Swanberg	Aye
Toole	Absent
Van Buskirk	Nay
Vermillion	Nay
Wagner	Aye
Ward	Absent
Warden	Absent
Wilson	Aye
Woodmansey	Aye

CLERK HANSON: Mr. Chairman, 28 delegates voting Aye; 46 noting No.

CHAIRMAN GRAYBILL: 46 having voted No and 28 having voted Aye, the motion is defeated. And we're considering still Section 26.

Mr. Arness, do you want the clerk to read your amendment?

DELEGATE ARNESS: Please, Mr. Chairman.

CLERK HANSON: "Mr. Chairman. I move to amend Section 26, line 15, page 9, of the Bill of Rights Proposal, by adding the words, following the word 'all' on line 15, as follows—quote—'civil cases and in all criminal cases not amounting to felony.' Signed: Arness."

CHAIRMAN GRAYBILL: Just a minute. Mr. Clerk, may I have it a minute?

CHAIRMAN GRAYBILL: Mr. Arness proposes an amendment on line 15 of Section 26, so that the sentence would read: "The right of trial by jury shall be secured to all and remain inviolate, but in all"—and then he adds—"civil cases and in all criminal cases not amounting to a felony—"

DELEGATE ARNESS: Then we should strike the word "cases" I see.

CHAIRMAN GRAYBILL: Strike the word "cases"—"and upon default of appearance or by consent of the parties expressed in a manner by law, trial by jury may be waived." In other words, it has the effect, in my view, of not allowing a defendant in a capital—in a felony case to waive the trial by jury, is that right?

DELEGATE ARNESS: Correct, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. Mr. Arness.

DELEGATE ARNESS: This is the portion of the change which I think that the County Attorneys would have liked. And for this, I think that probably they may very well have endorsed this, although I don't know. The effect of this would be to make it a good deal easier to be a County Attorney. I think, speaking from my own experience at that, that it's much easier to try a case without a jury. It requires a good deal less work and a good deal less preparation. And I think that the present rule, which does not permit a waiver of a jury case in a felony, is a good one. Most of these felony cases and most of the criminal cases are defended by young lawyers. Many of them are people without experience and more enthusiasm, sometimes, than legal training. I think that there is a temptation for them to waive the jury trial and that they may not fully be apprised of what they are doing or the disadvantages in waiving a jury trial on behalf of their client. Also, there is a certain trepidation about going before a jury. The defendant in a criminal case is, I think, entitled to a jury, especially in a felony case, because these are matters of serious import not only for the defendant but for society as a whole. And I feel that the jury case gives a good deal more exposure and a good deal more publicity and certainly a good deal more consideration to the case than just a trial before the judge. And it seems to me inconsistent to require that the verdict be unanimous in all cases, which I think is a good provision, and then on the other hand, to allow the jury to be waived, so that what essentially we have is a jury of one person to try the case. I realize that it probably would not be wise to put in this paragraph—or in this provision that all juries be 12-man juries. I would be tempted to suggest such a thing, but as it is, I think that this amendment is sufficient. It would at least insure that, in felony cases, that there would be a jury. And I think that in such cases, that a jury is required and that it's necessary under our adversary system. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman. I rise in support of Mr. Arness' amendment. It's been a long time since I've been a County Attorney; I think it's been almost 30 years since I was last County Attorney. But I do know, in the criminal cases, most of them occur with indigence being charged, where the court makes an appointment of some young lawyer in the community to defend the accused. And I endorse much of what Mr. Arness said in that regard, but there's one more factor: that on a trial to the court without a jury, it's much less expensive for the county. There's quite a bit of pressure put on the appointive counsel to waive a valuable right of a jury to—which the accused is entitled to have. Also, the temptation on the part of the defense counsel, who is appointed and who gets about the same amount of money whether he disposes of the case easily or whether he works hard at it, is to take the easy route. And I don't think our form—system of justice should be influenced in that manner. I don't care who the person is. Under our law and under our theory of justice, that individual is entitled to the best effort possible in his behalf. He is entitled to put forth whatever defense he may have in the best light possible. And oftentimes, the judge also is somewhat desirous of making his court look good in the eyes of the taxpayers and the County Commissioners, to cut down costs. And this opens up a whole Pandora's box of reasons why the pressure is placed upon a defendant, upon the defendant's appointive counsel to waive the jury, do things the easy way, save taxpayers money. And, therefore, I support Mr. Arness. This is an important matter also in regard to the protection of the individual rights of people.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman. I rise to oppose the amendment. I certainly feel that this is not in any way eliminating a person's right to a jury trial. He certainly does have it. What it does is give the individual the option of determining, with his attorney, whether or not it would be in the best behalf of his defense to waive the jury trial, which may not come up in this county for another 4 to 5 months while he's still in the jail, or go directly to the judge now, waiving the jury. The burden is on the state always to prove that he knowingly and intelligently waived this constitutional right. They would certainly see that this is protected. As far as the public defenders, I've found that the younger public defenders have by far been the best public defenders and that many of the old have been ineffective in many cases. It would allow the Legislature to be flexible in dealing with this. In the Criminal Code, it would allow them to set the standards that they want; they would not be bound. It would give them flexibility, and I feel that it would still give the protection to the individual. And, as I said, I have spoken with this entire section to the past President of the Montana Bar Association, and he thought it would be a very good step forward. And as a defense attorney on this, it's something that I would like to see; and our committee felt would be a great improvement in the present law. Thank you.

CHAIRMAN GRAYBILL: Is there other discussion? Very well. The issue arises on Mr. Arness' motion to add the term—the words "civil cases and in all criminal cases not amounting to a felony" on line 15, the effect of which would be to make it impossible for a defendant to waive the jury trial on a felony. So many as shall be in favor of Mr. Arness' motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The motion fails. We are now back discussing Section 26.

And, Mr. Holland, do you have an amendment?

DELEGATE HOLLAND: Yes, Mr. Chairman.

CHAIRMAN GRAYBILL: Do you want the clerk to read your amendment, Mr. Holland?

DELEGATE HOLLAND: Yes, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Clerk.

CLERK HANSON: "Mr. Chairman. I move to amend Section 26, page 9, line 14, following the word 'shall' by inserting—quote—'in all cases in law and equity'—end quote. Signed: Holland."

CHAIRMAN GRAYBILL: What line was that?

CLERK HANSON: Line 14 on page 9.

CHAIRMAN GRAYBILL: "—in all cases in law and equity"?

CLERK HANSON: Yes, sir.

CHAIRMAN GRAYBILL: Very well. Mr. Holland has an amendment, the purpose of which is to add, on line 15, Section 26, after the word "cases", the words "in law and equity", so that the phrase reads: "but in all cases in law and equity upon the default of appearance", et cetera; is that right, Mr. Holland?

DELEGATE HOLLAND: Yes.

CHAIRMAN GRAYBILL: Very well. Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman. I've discussed this matter with Mr. Dahood, and what I wanted to do is clarify the right of a person in a civil case to have a trial in either law or equity. Mr. Dahood has stated that he personally doesn't have any objection; I don't know if he can speak for the committee. But I wanted this for clarification purposes.

CHAIRMAN GRAYBILL: Is there other discussion?

Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. Mr. Holland approached me with respect to the amendment, and I indicated to him that I certainly had no objection. And I think I should explain that within the civil area of the law in the State of Montana, as well as in all other jurisdictions, we have a certain area that we call the area of equity. And although within that area you may have the same major concern with respect to the rights of the individual from a civil standpoint, nevertheless, traditionally, the courts have said that in those areas you do not have a right to a jury trial. Sometimes, in those areas that we referred to as the areas of equity, the consequences may be more severe than they are in those civil areas of the law where the right to a jury trial is permitted. I see nothing in Mr. Holland's amendment that is going to cause any particular problem in the administration of justice. It may well improve it, because within this so-called area of equity, in the event that there are not any fact questions for a jury to decide and what is before the court is solely a matter of law, a question for a trained judge to answer, you would not have the right to a trial by jury, because a jury is basically the judges of the facts. Moreover, under our rules of civil procedure, even though we indicate in our Bill of Rights that every citizen is entitled to a jury trial, still that individual citizen or party litigant must invoke that right by making demand, at the appropriate point in the civil court proceeding, demanding that he have a jury trial. In most equity actions, I am satisfied that counsel representing the respective parties would probably not invoke the right to a jury trial. But as Mr. Holland has indicated by his amendment, there may very well be cases within the area of equity where the fact dispute is very serious and very complex and a fact dispute that traditionally should be decided by a jury. I think I speak on behalf of my committee; I have looked in the direction of the committee members that are on the floor. I don't see anyone disagreeing with the statements that I have made, and, consequently, on behalf of the committee, we do not oppose the amendment proposed.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: May I ask Mr. Holland a question?

CHAIRMAN GRAYBILL: Mr. Holland, will you yield? Get Mr. Holland.

DELEGATE ARNESS: (Laughter) I guess he doesn't yield. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Davis, you take over, and we'll get Mr. Holland back.

DELEGATE DAVIS: Mr. President [Chairman] and fellow delegates. Don't leave, Mr. Dahood; I might want to ask you a question. I oppose the majority committee who has had such a well-thought-out and well-reasoned proposal here, abandoning their position so easily on this matter of in law or in equity. We haven't—if, as long as this committee didn't have the opportunity—give the good reasoning to this as they have to other—You can sit down; I haven't got a question yet, thanks, Wade. No, go ahead. (Laughter)

CHAIRMAN GRAYBILL: Delegate Dahood.

DELEGATE DAVIS: It comes to mind the traditional procedure that's been established in our courts for a long time—We don't know—it hasn't been explained by Delegate Holland or by Delegate Dahood in abandoning the principal position—what we're going to have this extend to. Are we going to have it extend to the equitable matters of child custody cases and have the jury sit in on such matters as this? On dependent neglected children? On adoption matters? On accounting—complicated accounting procedures that are equitable matters? On title matters? Quiet title actions that are equitable matters, principally complicated legal proceedings, where the law is what will prevail and there are no questions of fact? I would seriously resist changing the language of the present Constitution in this regard without some strong comments and a strong position in this proposal or some strong reasoning in this journal as to what it's intended to affect and what it isn't intended to affect. The traditional concept, as you all know, in jury trials and civil cases is the jury tries—determines the factual situation and the court determines the law. And if you have a question and it's a legal matter, then, of course, you have no need for a jury and they cannot make any determination. They have to follow the law or it's a mistrial. So I support the majority proposal as it's written in the majority proposal and oppose the proposed amendment by my good friend, Delegate Holland, from Silver Bow County. Thank you.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: Yes, I see Mr. Holland is back. And, of course, my question went to what Mr. Davis was talking about just now, and I was wondering particularly what equity matters you had in mind. Is it divorce, quiet title, or accounting, or what is it that you're after here?

DELEGATE HOLLAND: All equity matters, Mr. Arness. Divorce, I might state for you and Mr. Davis, has always been, my understanding, a statutory matter and isn't an equity matter at all. What I'm talking about is factual questions. As the lawyers all know, law in England grew up in two courts: one, the equity, the ecclesiastical court in which no jury trial was granted; the other one is the common law system in which jury trials were always granted. Now, for some strange reason—I think this is the traditional language that's in here—"The right of jury trial shall be secured to all and remain inviolate." Now, for some strange reason, the Montana court has held in equity matters—and I'm not talking about divorces; I'm talking about equity matters, factual questions like a question of—an equity question on a contract. That is—supposing that you claim the right to set aside a contract as distinguished from a breach of a contract. The court does not grant that one, because it grew up in equity—a jury trial, because it grew up in equity, and does grant it in the other. And I say that a jury should be granted in all matters, whether they come out of ecclesiastical courts or otherwise. Now, Mr. Davis speaks of child custody. I would take it he was talking about the state taking the children away from the mother, rather than the custody case in a divorce case. Those are statutory in matter and wouldn't be covered by an equity action. It's only those actions that came out of equity as I had referenced to. This is where they've been depriving—for years they've been depriving people in those cases of a jury trial. Now they want to put this language in so that any contested action that came out of the old common law or the equity system, you get the right to jury trials. It seems to me that when you got two things: you got a contract; one, you're going to reform it, you can't have a jury; the other, you got a breach and you do have a jury. It doesn't make sense to me. I say that if you've got a factual question, you should be entitled to a jury in either action. And I'm not referring, of course, to all these statutory actions at all. Divorces wouldn't be covered. Child custody—the state taking away custody of children, things like that wouldn't be affected at all. It would only be in the actions coming out of equity that this would go to.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: May I ask another question on it?

CHAIRMAN GRAYBILL: Yes.

DELEGATE ARNESS: Mr. Holland. It's been my understanding that the court has ruled that these matters that you talked about as statutory are, in fact, equity matters—quiet title, accounting, divorce, this type of thing. Aren't they considered equity? And isn't that what you had in—that's not what you had in mind then?

DELEGATE HOLLAND: Quiet title, Mr. Arness, I believe is equity, but divorce isn't. Divorce is statutory, which is—in other words, there was no divorce in the ecclesiastical court, so it's not considered an equitable action. Title to real estate—the quieting title to real estate does come, I think—maybe we—I should do more research on quiet title, but I believe it is equitable in action. Now, what I'm saying to you, Mr. Arness, is if we have a factual question—if, for instance, your client has a deed, he claims it's a good deed; my client resisted that this is a good deed. Now why can't a jury hear the facts and rule in that matter, rather than having the court do it? These—the fact that we lawyers have been making mistakes for a thousand years doesn't mean we could—we should continue to make mistakes. What I'm saying is I'm a very strong supporter of jury trials; and I'm saying that in all factual cases—what reason or what logic can anyone say that because in England they did it a thousand years ago, we have to continue to do it today? I'm saying that if we got a factual question and it comes out of equity, a person should have a right to a jury trial just the same as whether it came out of the common law court.

DELEGATE ARNESS: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Arness. Let's have it quiet, please, in the chamber.

DELEGATE ARNESS: Apparently, Mr. Holland and I have a disagreement on this. It's my understanding, at any rate, that the courts of chancellery—or the chancellor's courts were not necessarily the ecclesiastical courts and that equity would comprehend, under our system, all things that are not criminal in nature or not matters at law as we talk of things at law. I'm not talking against the proposal, but it seems to me that what we're doing is granting trial by jury in all cases regardless of what they are and of what nature they may be. And it seems to me that it's something that hasn't been considered by the committee. I just think that the Convention should be aware that this is something that doesn't seem to have been fully considered. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman and fellow delegates. I would like to respond to both the points of Delegate Davis and Delegate Arness. I think that, speaking for myself, the reason that I'm so readily amenable to accepting this amendment is because—that when I considered it—and I think that most other nonlawyers would approach it the same way—when I read the words "the right of trial by jury shall be secured to all", that's the way I interpreted it. And so, when additional wording is put in there to further clarify the fact that, in truth, trial by jury will be secured to all at their request, this is the reason that I support the question without a great deal of deliberation or consideration. Because that was my understanding when we first presented the section, and when question is brought that, in fact, maybe that wording isn't sufficient to secure a trial by jury to all, then I support that position. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Cross.

DELEGATE CROSS: Mr. Chairman. I'm not one of the fraternity of attorneys and so I don't speak in "legalese", but according to Webster's dictionary, there is a third definition of this word "equity" which raises some questions in my mind, and perhaps one of them could clarify it. It says, "the money value of a property or of an interest in a property in excess of claims or liens against it; a risk interest or ownership right in property". And I'm really puzzled by this, and I really would like to know what they mean when they put in the word "equity".

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. In response to the question of Delegate Cross, the courts have traditionally referred to certain cases as falling within the ambit of equity, and as Delegate Arness has pointed out, it stems from the jurisdiction of the chancellor's court in England. In 104 Montana, in a case that involved this question, the Supreme Court of the State of Montana did say that the conditions that existed with respect to the distinction between equity and law shall pertain notwithstanding the constitutional provision that you have before you, and the Supreme Court ruled that the framers of our Constitution did not intend to put aside the distinction between the law and the equity insofar as the jurisdiction of the court is concerned. And our court indicated there is no right to a trial by jury, notwithstanding this constitutional section, in those cases that fall within the jurisdiction of the common law chancellor's court. Question: why did we not expand it in the committee? One, we had no delegate proposals; two, we did not have a citizen suggestion; three, perhaps sometimes lawyers are timid in dealing with the broad scope of their profession. In a particular case, where we represent an individual client, we don't know the meaning of the word "timidity"; we're out to represent our client to the fullest extent of our ability, our energy, and the law. But when we're dealing in these procedural matters, we, of course, do not want to bring about changes that some may consider to be drastic changes. There would be some problem, and Delegate Davis has pointed to some of the problems that we might have. Precisely how would that particular right be restricted so as not to apply to certain cases where a trial by jury would not serve the cause of justice? And, of course, we're talking about the domestic relations suit, the divorce matter, the separate maintenance matter, the child custody case. As Delegate Holland has indicated, it is not his intention to have that particular right to trial by jury apply to that type of case. And I think we have made the record here this morning, with this dialogue and with this debate, so that if the amendment is adopted, it is not going to be applied to those situations. But the fact, nevertheless, remains true as Delegate Holland has pointed out. It does happen on occasion, in cases that are denominated equity cases simply because traditionally they were within the jurisdiction of the old chancellor's court where the fact controversy is won, that under our American concept of justice, the citizens of the community should resolve and decide for the citizens in controversy. I cannot stand in opposition to the amendment because the amendment would serve, in certain areas of the law, the best interests of the citizens. And other than that, I'm not prepared to make any additional comments, and I hope that my colleague, Louise Cross, is satisfied with my answer. She doesn't know, but thank you anyway, Mr. Chairman. (Laughter)

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: I rise in opposition to the amendment. I think it's better taken care of by the Supreme Court and its rule-making authority, or taken care of by statute. Actually, it's been working fairly well for 500 years. If there is a substantial question of fact in most equity cases—he isn't required to—a judge will call a jury to decide that question of fact. This is a substantial departure over what the present practice is, and it might substantially increase the cost of the counties as to juries. I think it should be decided by the Legislature.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman. I want to call your attention to the fact that equity is not just limited to some of the matters that have been discussed here so far. It includes, among other things, interpretation of instruments such as wills; it includes the construction of contracts; it includes the recision—that is, the cancellation—of contracts or other instruments of record; it includes the reformation of those contractual relationships between individuals; it includes matters of trust. All of these are considered, inherently, within the jurisdiction of equity. Now, I suppose that, at least in our court system in Gallatin and Park County, that there are perhaps at least twice—perhaps three times—as many equity cases tried as actions at law. Generally speaking, when we're speaking of actions at law, we're looking at money damage; we're looking at negligence cases; we're looking at actions to recover debt. I believe that these actions constitute less than half of the matters considered in the District Courts today. And if the District Court was required to have a jury in all equity cases, then I think it will cause considerable congestion on court calendars, and this could raise a serious problem just in the administration of justice. I call this to your attention for your consideration.

CHAIRMAN GRAYBILL: Very well. The issue arises on Mr. Holland's motion. Mr. Holland, do you want to close?

DELEGATE HOLLAND: Yes. I have just this to say to the delegates. Mr. Berg and Mr. McDonough and Mr. Davis have all—and Mr. Arness have all spoken about the—this right to jury trial. I think if you listened closely to them, what they said was, "We did it this way for 500 years, so why improve it now." And I suggest that we're getting all kinds of criticism for not making an improvement. We're not going to congest the calendar. We may add a little expense, but we're going to get more justice, and I don't see any reason for resisting something just because it's expensive if we're going to get better justice. I submit there never was a good distinguishment—a good reason for it. The original Convention wanted jury trials, obviously, and the court has overruled it. And I think if we make it clear here, we'll be able to have a jury trial in every contract action, whether it's recision, reformation, or breach. And why should your client be deprived of the right to trial by jury because the English system did it that way? I submit that the jury trial is the most important bulwark a citizen has in enforcing his rights, and we should extend it to equitable actions.

CHAIRMAN GRAYBILL: Very well. The question is on Mr. Holland's amendment to Section 26. He would add, on line 14, a phrase so that the sentence would read: "The right of trial by jury shall, in all cases in law and equity, be secured to all", et cetera. So many as shall be in favor of Mr. Holland's motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: So many as are in favor, please vote Aye on the voting machines; so many as are opposed, please vote No. Have all the delegates voted?
(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?
(No response)

CHAIRMAN GRAYBILL: The vote being 44 against and 31 for, the motion fails. Very well. We're still discussing Section 26. Are there further amendments? Members of the committee, you have before you, on the recommendation of Mr. Campbell that when this committee does arise and report, after having had under consideration Section 26, that it recommend the same be adopted. All in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: So ordered, and it's adopted. Section 27, Mr. Clerk.

CLERK SMITH: "Section 27, Imprisonment for debt. No person shall be imprisoned for debt except in the manner prescribed by law, upon refusal to deliver upon his estate for the benefit of his creditors, or in cases of tort, where there is strong presumption of fraud." Section 27, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Sullivan.

DELEGATE SULLIVAN: Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 27 of Proposal 8, it recommends that the same be adopted.
Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Sullivan.

DELEGATE SULLIVAN: The committee voted unanimously to retain the former Article III, Section 12, unchanged. It was felt that the provision is an adequate safeguard for the right of one in debt to be free from imprisonment. No delegate proposals are received on this provision. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Holland—or Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman. I move that Section 27 be amended, in line 25 on page 9, by inserting a period after the word "debt" and deleting the rest of the sentence.

CHAIRMAN GRAYBILL: Mr. Joyce has proposed an amendment to Section 27 by putting a period after the word "debt", so it reads: "No person shall be imprisoned for debt", and then deleting the words "except in the manner prescribed by law, upon refusal to deliver his estate", and so forth.

DELEGATE JOYCE: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: I note that the recent North Dakota Constitution did just this. The additional language is obsolete. I don't think anybody has been imprisoned for debt for hundreds of years. I think it ought to be made clear that you can't be imprisoned just for being in debt. And if you committed some crime, you've defrauded somebody, you can be prosecuted criminally. And I think the archaic words in this section should be deleted to recognize the modern facts of life, which everyone agrees—or at least I should think everyone now agrees—that you shouldn't be thrown into debtor's prison. Thank you.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. May I ask a couple of questions of Mr. Joyce, please?

CHAIRMAN GRAYBILL: You may ask a series of questions of Mr. Joyce.

DELEGATE JOYCE: I yield.

DELEGATE MURRAY: Nothing serious—do you—would you anticipate, Delegate Joyce, there would be any problem for—under this section, as you propose to amend it, where you would have any circumstance arising on a contempt of court which might arise out of a debt?

DELEGATE JOYCE: No, I don't. I mean —as I understand it, the power of the court to put you in debt is the inherent power—or in jail for contempt is when you refuse to comply with the court order. And that's—in those cases where the court has the power to compel you to do something, such as, I take it you have in mind, to support your children.

DELEGATE MURRAY: Right. And I also have in mind the matter of investigation after a judgment is taken—you know, where you call a judgment debtor in—and the proceeding there.

DELEGATE JOYCE: Well, it seems to me when you call people in on the supplementary proceedings, you want to collect a judgment because the fellow has made a fraudulent transfer, why, you set aside the transfers. But I don't think the court has the power to put you in jail just because you won't pay the judgment. I don't think he should have. I don't think they have ever exercised it that way, to my knowledge.

DELEGATE MURRAY: Then it is not your intent to get around those matters by making this amendment in any way, is it?

DELEGATE JOYCE: No, absolutely not. I think it—that the law should be that you just can't be imprisoned for a debt, period. And if you refuse to deliver up your property for the benefit of your creditors, if there are equitable procedures to compel you to do so, then you have to institute an action in the court, get an order of the court authorize—ordering you to do that. And if you don't do it, you're in contempt of court and the court imprisons you, then, at that time not because—just because you violated the order of the court, which the court has jurisdiction to impose on you; but I don't think that really should ever be done either. But—

DELEGATE MURRAY: Okay. Thank you very much, Delegate Joyce. After this dialogue, Mr. Chairman, I do not resist, on behalf of the committee, this amendment.

DELEGATE AASHEIM: Mr. Chairman, may I ask Delegate Joyce a question?

DELEGATE JOYCE: I yield.

DELEGATE AASHEIM: Mr. Joyce. I notice, under Section 12 of Article III in the Code, there's an annotation in 30 ALR as to alimony or maintenance as debt within constitutional or statutory provisions against imprisonment. Have you looked into that question, or have you read the annotation?

DELEGATE JOYCE: I haven't, but I would say this: that if the argument is—I would guess that the annotation says if the argument is made that you can't be imprisoned for failure to pay alimony, that you cannot rely upon the constitutional prohibition that deprives you of being imprisoned for a debt.

DELEGATE AASHEIM: Will Mr. Joyce yield again?

DELEGATE JOYCE: Yes.

DELEGATE AASHEIM: I would imagine that also, but I wondered if you had read the article referred to.

DELEGATE JOYCE: Well I—a truthful answer to it is that I haven't, but I'll be glad to go out and get it and read it and make you a bet that I'm right.

CHAIRMAN GRAYBILL: Mr. Drum. The Chair would like to point out to the delegates that when you stand in the back like that, it makes it very difficult for me to tell who's up. So I don't mind you talking to people, but when you—will you please move off behind the posts. I get a lot of criticism from the back row for not seeing them, and the main reason is that there's too much traffic back there. Anybody can—I don't mind you going in and out, but when you're not doing anything, I wish you'd stay away from the back row so I can see who's back there.

Now, Mr. Berg.

DELEGATE BERG: [Will] Mr. Joyce yield to a question?

DELEGATE JOYCE: Mr. President [Chairman], I will.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE BERG: Would you object to an exception as for the support and maintenance of dependents?

DELEGATE JOYCE: Well, I don't think you should be able—

DELEGATE BERG: Go ahead.

DELEGATE JOYCE: Would I object to amending something in that connection?

DELEGATE BERG: Yes, including that in the amendment.

DELEGATE JOYCE: No, I wouldn't; because it seems to me that you can't be imprisoned for not supporting your children per se. The—what they have to do is, they charge you with a crime, in one instance—say for not supporting your dependents. That's a misdemeanor and you're charged with the crime and you can be imprisoned for that. And secondly, if you—say there's an order of the court that you're compelled to pay something and you don't pay it, they put you in jail because of—you're in contempt of court. But it doesn't seem to me that they should be able to put you in prison for debt or for failure to deliver up your estate, and this gives the Legislature the authority to put you in jail, except in the manner prescribed by law, for debt. And I don't think you should ever have to go to jail for not paying your debts.

DELEGATE BERG: Well, Mr.—Mr. Chairman.

CHAIRMAN GRAYBILL: (Inaudible)

DELEGATE BERG: As I construe this, a debt created by a court decree or a judgment can be distinguished in this respect: that a debt for payment of an obligation, such as a contractual obligation, is one kind of a debt; but a debt created for the support and maintenance of minors or for the support and maintenance of a divorced wife is also by court decree, and traditionally, that has been enforceable by the contempt proceedings inherent in the court, whereas an ordinary civil debt is not. And if we're to treat this word "debt" without that distinction, we may very well be preventing the court from enforcing it's decrees in domestic relation matters. Thank you.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman. I rise in support of the Joyce amendment. One of the finest legal minds in Montana is Professor Larry Elison, who appeared before our committee in extensive hearings. After we had completed our final draft, I sent it to him, and he had very few comments to make. However, in this particular section, it was his recommendation—and I don't know that Delegate Joyce had talked to him—that after the word "debt", a period be placed. Discussing this with him, he said it would in no way affect the contempt powers of the court in divorce matters, in alimony matters. He felt it was as the law should be, and he fully supported this amendment. And I wholeheartedly agree and would support Delegate Joyce and recommend that it be adopted as amended.

CHAIRMAN GRAYBILL: Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President [Chairman], would Mr. Joyce yield to a question?

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: I yield, Mr. President [Chairman].

DELEGATE JACOBSEN: Now, it states, "No person shall be imprisoned for debt". Now, aren't there laws on the books already that said, "except in the manner prescribed by law"? What would be wrong with leaving "except in the manner prescribed by law" in this first sentence and delete the rest?

DELEGATE JOYCE: Well, I suppose it's a philosophical proposition. I just don't think that the Legislature should ever be able to pass a law to be able to put you in jail for a debt. I think that the concept of the debtor's prison is lost in antiquity.

DELEGATE JACOBSEN: One more question, Mr. President [Chairman]?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE JACOBSEN: Mr. Campbell spoke of the divorcee. I have a personal relation with a party that put her former husband in jail for nonpayment of alimony, and this did force him to pay it for awhile. Now, is this in the law right now?

DELEGATE JOYCE: Yes, and it would continue to be in the law under my amendment, because in order to put—I mean, you've had—if you only know of one case, I know of hundreds, and every lawyer here knows of thousands. That's one of the biggest social problems of the day, I suppose. But the way you put people in jail for not supporting their children is that you get jurisdiction over them, you cite them into court, you have a hearing, you have the court make an order ordering [him] to pay a certain amount and then, if they don't pay it, they're in contempt of the court. That's how they're jailed. And it isn't—but you just can't go out and pick them up for not supporting them without some due process of law. And this—my amendment wouldn't affect it in any way. And I think what the framers of the original Constitution—I think they borrowed this from Colorado—and at that time, they were still putting people in jail for certain types of fraud on creditors; and I think that they don't do it anymore and that they shouldn't be able to do it anymore. And that's why I've offered the amendment. Our sister state of North Dakota has done it, and it seems to me that's the way it should be done.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President. Mr. Joyce, would you yield to a question?

CHAIRMAN GRAYBILL: Mr. Joyce?

DELEGATE JOYCE: Mr. Chairman, I yield.

DELEGATE DAVIS: Now, Mr. Joyce, I want it thoroughly understood for the record that if I vote for your amendment and I don't pay my income tax, which is a debt, I cannot be imprisoned for that then. Is that correct?

DELEGATE JOYCE: No, it's not correct.

DELEGATE DAVIS: Why not? Isn't that a debt?

DELEGATE JOYCE: Because the State of Montana, I don't think, does make it a criminal offense not to pay your income tax now; but how they get you in the federal level, that they don't put you in jail for not paying the tax, they put you in jail for lying—for making a false return under oath, under perjury. But as I understand, the federal law is if you report your income and that you owe, like in your case, several thousands of dollars (Laughter) of federal income tax—

DELEGATE DAVIS: That's over a 10-year period.

DELEGATE JOYCE: —and you report that you owe this money but you just don't have it to pay, that's a civil matter. They can come in, seize your property, collect it; but they can't put you in jail for it. And I think that's proper.

DELEGATE DAVIS: Thank you, Delegate Joyce.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman. Would Mr. Joyce yield to a question?

CHAIRMAN GRAYBILL: Mr. Joyce?

DELEGATE JOYCE: I yield.

DELEGATE DAHOOD: Mr. Joyce. I must start with an apology. I stepped out of the room in connection with a phone call when you moved the amendment. May I inquire, then, for the record and for my own satisfaction, so that I may consider voting for your amendment—what you are saying is this: that no citizen shall be imprisoned for debt as such, but if some particular payment is ordered by the court and it is the determination by the court that that individual has the ability to pay and refuses to do so, he at that point can be cited for contempt of that court order. And for that contempt, the inherent power of the court to judge a person to be in contempt, he can be ordered to jail until he purges himself of that contempt either by living up to some condition laid down by the court or paying the amount involved. Is that correct?

DELEGATE JOYCE: Well, let me answer it this way. We get back to the distinction between law and equity. I think the only way they put you in jail now is if the court has some equity jurisdiction where they have the power to compel you to do something and you don't do it; you're in contempt of court; they send you to jail. But I don't want the Legislature or any court, just because I don't pay somebody's judgment at law—say you sue me for $500 and get a judgment against you. As I understand the law now, no court has the right or the power to compel me to pay that judgment; you've got to collect it the best way you know how. And I don't think any court has the right to put me in jail for not paying it now, and I don't think they should have in the future.

DELEGATE DAHOOD: Mr. Chairman. May I ask Mr. Joyce to yield to another question? Will you yield?

DELEGATE JOYCE: I yield.

DELEGATE DAHOOD: Mr. Joyce, in a typical case where there is a judgment for payment of a certain sum of money and in order to enforce that judgment a writ of court is issued so that the defendant or debtor is examined in aid of execution and it is found that he is concealing assets that can be used to pay that honest debt. As you well know, under present law, if he refuses to disclose the whereabouts of those assets for execution so that debt can be paid, he can be judged in contempt of court and placed in jail until he purges himself. Now, by your amendment, would that situation then be prohibited?

DELEGATE JOYCE: Yes, I think it would.

DELEGATE DAHOOD: You think it would?

DELEGATE JOYCE: Yeah. Well, as I understand, the proceedings supplementary to judgment are equitable proceedings. You cite the man in and you ask him where his property is, and if he's discovered that he's concealing his assets, why, I don't think that—apparently under the current law, the argument could be made that he could be jailed for that. But if he refuses to disclose where his assets are in answer to a legitimate question, he could be jailed for contempt of court for not following an order of the court. My point is that I don't think that you should be able to jail anybody for debt.

DELEGATE DAHOOD: Mr. Chairman. One of the inherent basic powers of any judicial tribunal is the power to enforce its orders, its decrees, and its judgments. And if the day should ever come when a court does not have that power to enforce its orders, decrees, and its judgments, then we are substituting lawlessness for the law. And under the answer that has been given to us by Delegate Joyce, I must, in the interests of law and order, oppose the amendment.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman. May I ask a question of Mr. Dahood?

CHAIRMAN GRAYBILL: Mr. Dahood, do you yield?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE ROMNEY: Mr. Dahood. As a layman, I hear all through this Convention about the inherent powers. May—will you kindly advise me where the court gets its inherent power?

DELEGATE DAHOOD: The court, Mr. Romney, receives its inherent powers from the traditional concept under which the courts have developed through the common law which has been recognized in the American jurisdiction. The courts do have a certain amount of power that is given to them by statute, but the framers of that power assume that within the exercise of the type of justice that we have, there are certain powers that necessarily must run with the court for the courts to be able to function. If you were to take away these particular powers for the courts to act as courts, then you would not have any way of enforcing what the courts do in resolving controversy between citizens. And then the courts would cease to function effectively.

DELEGATE ROMNEY: Mr. Chairman, another question.

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE ROMNEY: That means that the inherent power is not a power bestowed upon the courts—not just in this case, but in any case—by the people.

DELEGATE JOYCE: Yes, impliedly, it is bestowed by the people so that the court can function with all of the power and authority the court must necessarily have in our type of society. It is not defined explicitly, simply because the citizens, by framing the Constitution that creates the court, leave it up to the court to take those powers that it must necessarily have, short of actually violating the basic rights of the people as set forth in the constitutional document itself. For example, in our Bill of Rights—many of the provisions in that Bill of Rights are limitations upon the power of the court. And as long as the court does not conflict with those particular limitations, that court has whatever power is necessary to function as a court, with authority to enforce its decrees, its orders, and its judgments.

DELEGATE ROMNEY: Mr. Chairman, a couple of other questions.

CHAIRMAN GRAYBILL: Yes, Mr. Romney.

DELEGATE ROMNEY: In that case, then, the court can—by these inherent powers, it makes its own rules, avoids the constitutional inhibition to—against accepting payment for per diem and mileage, expends money that is not appropriated, and things of that kind. It has an inherent power because it is a court?

DELEGATE JOYCE: No, Mr. Romney, the court does not have any inherent power to do anything that violates the Constitution. No branch of government has that power. The court will determine whether or not the course of conduct that has been questioned violates the Constitution, but the court does not have any power to violate the Constitution. And the Supreme and Appellate Courts have always stated in a particular case—regardless of the fact controversy, regardless of the individual involved, no matter how heinous, how despicable the crime—what is before the court at that particular point for judgment is the constitutional document itself, to make sure that the rights of the citizens are fully protected. The court cannot, does not, and will not violate the Constitution.

DELEGATE ROMNEY: That is, it should not. Thank you very much.

DELEGATE DAHOOD: And should not. We corrected one of those incidents yesterday.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Will Mr. Dahood yield?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I yield, but this isn't my amendment. (Laughter)

DELEGATE LOENDORF: That's right. But you have opposed it, and your reason for opposing it is the last answer given to you by Mr. Joyce, is that correct?

DELEGATE DAHOOD: That's correct, Jerry.

DELEGATE LOENDORF: Are you absolutely sure his answer was accurate?

DELEGATE DAHOOD: I'm not absolutely sure it was accurate, but it's reflected upon the journal, and that necessarily is going to aid whoever should interpret that particular provision in reaching some conclusion. And I think if they look to our journal, to our records of the dialogue that took place, they would take Mr. Joyce's answer and say this is what was meant by it. And if that's what is meant by it, that is destructive to the judicial process.

DELEGATE LOENDORF: Thank you. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Loendorf.

DELEGATE LOENDORF: Not being on the committee and not having the benefit of the research, I'm going to make my guess here too. I'm going to support Mr. Joyce's amendment. And I believe there's a real distinction between a debt and an obligation a court finds to exist based on law. For example, if I owe Mr. Dahood a hundred dollars or he believes I do, he sues me in court and gets a judgment against me. The court merely finds and determines that I owe him a hundred dollars; it does not order me to pay that hundred dollars and could not hold me in contempt for not complying with that judgment. But in a case where we have a divorce, for example—I'll have to use Dahood or someone else, assuming I'm not married. Perhaps I can use Mr. Noble—(Laughter) —assuming he was divorced and a court ordered him to pay so much money as child support or alimony. This is an obligation, it seems to me; a court finds, based on law and not by a contractual obligation, between two parties and then not based on a debt, as I understand it. And, therefore, I support Joyce's amendment.

CHAIRMAN GRAYBILL: Mr. Joyce.

DELEGATE JOYCE: Mr. Chairman, may I close?

CHAIRMAN GRAYBILL: No, not yet.

DELEGATE JOYCE: Well, let me explain then.

CHAIRMAN GRAYBILL: Okay, you may explain.

DELEGATE JOYCE: I yielded to several questions, and each time, I answered the question as I thought, as perfectly elementary that my amendment would not prohibit a court from putting someone in jail for contempt of court. Then Mr. Dahood asked me, did I propose to do away with what currently appears in the Constitution which, in effect, says that the Legislature can, by law, imprison me for refusal to deliver up my estate to pay a debt. And I say, "Yes, I intended to provide that a court can put me in jail for that particular offense, if it is an offense." So that I really am not trying to destroy the entire judicial system or get into the code words of law and order. I think everyone's for law and order. But I just thought that this was—North Dakota has done it, and it just seems so elementary that you shouldn't be imprisoned for debt per se, and that the courts still can enforce obedience to their orders which they are authorized by law to make.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman. I move that we pass Section 27 until we reconvene after the noon hour. Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: I'm unwilling to accept Mr. Joyce's conclusions that debt would not include, for among other things, alimony and support of minors; and that the court power to hold one in contempt for failure to support his family is not included within the term "debt". I haven't read, nor has Mr. Joyce, the annotation on that that appears in 30 ALR at page 130. I think we'll all be better informed if we'll wait—at least a review of that annotation to determine this question.

CHAIRMAN GRAYBILL: Very well. The issue is on—
Mr. Dahood.

DELEGATE DAHOOD: I rise with some reluctance to oppose the motion. My reason for it is this: there's nothing wrong with the way in which the law is operating at the present time. No one is being imprisoned for debt; that violates the United States Constitution and it violates the Constitution of the State of Montana. There is no cause for concern that the particular language of this section is going to do anything to interfere with the rights of any citizen of the State of Montana. And I think my colleagues will have to admit that the law is being administered, at the present time, with due regard to those rights that we hold precious in our society. No court has abused its inherent power with respect to enforcing its judgments, its orders, and its decrees. We found no good reason to change this particular language. Yes, we thought about it. And I suppose if you want to try and isolate some of the words in that particular provision, you might be able to force the tortured conclusion that's been enunciated on this Convention floor. But by leaving the section exactly as it is, we do nothing more than approve and ratify what has been done till now. That is a basic concept for interpreting the intent of constitutional revision when it is made, and that is the primary presumption that must be indulged in when a Constitutional Convention affirms the language that has been in the old Constitution and is placed within the framework of the new Constitution. I see no need to change anything. And for that reason, I would oppose, reluctantly, the motion of Delegate Berg, whose intention is certainly most laudable, so that we might decide without any further discussion the motion of Delegate Joyce. And I would submit that we should defeat both motions and leave the law as it presently stands, which is a good law and an orderly law and one that has not caused any problem in the State of Montana. I oppose the motion, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Berg.

DELEGATE BERG: Mr. Chairman. I shall be brief. I, of course, just like Mr. Joyce and Mr. Dahood, do not want any debtor prisons of any kind in Montana. And I am in sympathy with the position that no one should be jailed for debt. But I am concerned as to what we mean by the term "debt". I am not satisfied with the discourse that's taken place here on the floor this morning. Indeed, I am afraid that if the interpretations of the word "debt" in other constitutions is contrary to what Mr. Joyce believes it to be and if the courts are to look to this Convention floor at this debate, and the journal, for determining that question and they find that it is contrary to what courts in other states have said, you have a serious problem of interpretation. I simply want to be certain that that question of interpretation is resolved without any question whatsoever.

CHAIRMAN GRAYBILL: Very well. The question is on Mr. Berg's motion to pass Section 27 until after the noon recess. So many as shall be in favor of that, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: So many as shall be opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it. Very well. The question is now on Mr. Joyce's motion. Do you want to close again?

DELEGATE JOYCE: Well, I asked you if I could close the last time and you said no. So—

CHAIRMAN GRAYBILL: I thought you did so, though, but go ahead, Mr. Joyce. (Laughter)

DELEGATE JOYCE: I'm just going to call the Convention's attention to the Hawaii Constitution, which says in Section 17, Article I, "There shall be no imprisonment for debt, period". And Alaska says "There shall be no imprisonment for debt". This section does not prohibit civil arrests of absconding debtors, which is, I guess, somewhere in between. And so I'm going all the way for the—against the debtor prison, with Hawaii and North Dakota. And as my good friend, Mr. Davis, says, I'm willing to let the hair go with the hide. I close.

UNIDENTIFIED DELEGATE: Tail—(Laughter)

CHAIRMAN GRAYBILL: Very well. the issue is on Mr. Joyce's motion to put a period after the word "debt" and delete the rest of Section 27.

Mr. Romney.

DELEGATE ROMNEY: May we have a roll call?

CHAIRMAN GRAYBILL: All right. All in favor, vote Aye on the voting machines; all opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Will the clerk please take the vote.

Aasheim	Aye
Anderson, J.	Nay
Anderson, O.	Nay
Arbanas	Aye
Arness	Nay
Aronow	Nay
Artz	Nay
Ask	Nay
Babcock	Absent
Barnard	Aye
Bates	Absent
Belcher	Nay
Berg	Nay
Berthelson	Nay
Blaylock	Nay
Blend	Nay
Bowman	Absent
Brazier	Nay
Brown	Aye
Bugbee	Absent
Burkhardt	Absent
Cain	Aye
Campbell	Absent
Cate	Absent
Champoux	Nay
Choate	Nay
Conover	Nay
Cross	Aye
Dahood	Nay
Davis	Aye
Delaney	Nay
Driscoll	Absent
Drum	Absent
Eck	Nay
Erdmann	Nay
Eskildsen	Absent
Etchart	Nay
Felt	Nay
Foster	Nay
Furlong	Absent
Garlington	Absent
Graybill	Aye
Gysler	Nay
Habedank	Aye
Hanson, R.S.	Nay
Hanson, R.	Aye
Harbaugh	Aye
Harlow	Aye
Harper	Aye

Harrington	Absent
Heliker	Aye
Holland	Absent
Jacobsen	Nay
James	Nay
Johnson	Nay
Joyce	Aye
Kamhoot	Nay
Kelleher	Absent
Leuthold	Nay
Loendorf	Aye
Lorello	Absent
Mahoney	Absent
Mansfield	Nay
Martin	Absent
McCarvel	Nay
McDonough	Aye
McKeon	Absent
McNeil	Nay
Melvin	Aye
Monroe	Nay
Murray	Aye
Noble	Nay
Nutting	Nay
Payne	Nay
Pemberton	Nay
Rebal	Absent
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Aye
Romney	Aye
Rygg	Absent
Scanlin	Aye
Schiltz	Aye
Siderius	Aye
Simon	Nay
Skari	Aye
Sparks	Aye
Speer	Nay
Studer	Aye
Sullivan	Nay
Swanberg	Nay
Toole	Absent
Van Buskirk	Aye
Vermillion	Aye
Wagner	Aye
Ward	Nay
Warden	Aye
Wilson	Nay
Woodmansey	Nay

CLERK SMITH: Mr. Chairman, 34 have voted Aye; 44 have voted No.

CHAIRMAN GRAYBILL: 44 having voted No and 34 having voted Aye, the amendment fails. We're considering Section 27. Members of the committee, you have before you, on the motion of Mrs. Sullivan that when this committee does arise and report, after having had under consideration Section 37—or 27, that it recommend the same be adopted. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: It's adopted. Will the clerk read Section 28.

CLERK SMITH: "Section 28, Rights of the convicted. Laws for the punishment of crime shall be founded on the principles of prevention and reformation, and full rights shall be automatically restored upon termination of state supervision for any offense against the state." Section 28, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman, fellow delegates. I move that when this committee does rise and report, after having had under consideration Section 28 of Proposal Number 8, it recommends that the same be adopted as amended.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman. The committee voted unanimously to adopt this revision of former Article III, Section 24. In doing so, the committee recommends that once a person who has been convicted has served his sentence and is no longer under state supervision, he should be entitled to the restoration of all civil and political rights, including the right to vote, hold office, and enter occupations which require state licensing. The committee believed that this is eminently proper and that the paramount concerns of prevention and reformation cannot be realized unless the ex-convict can readily move back into society as an equal participant in community affairs. Surely to rehabilitate one and attempt to insure that he has the opportunity to become a full member of the community requires that he be restored to the same rights, privileges and immunities as other citizens. This provision does not speak to the rights of the incarcerated while they're in prison, as did Delegate Proposal Number 98. It is not meant in any way to preclude them having all rights except those necessarily denied as a condition of their incarceration. The committee has also deleted reference to capital punishment. The reference to capital punishment is not necessary, as it merely grants the Legislature the power to do something it can do anyway. To delete this reference has no effect on the status of capital punishment in Montana. It remains in effect in those instances which the Legislature provides. The committee rejected Delegate Proposal Number 3, which would have abolished capital punishment. The committee felt the matter should be better left up to the Legislature. Now, for those delegates who think that this is soft on crime or the criminal and gives him more rights than he should have, may I say that, at present, I believe there are 24 occupations which are state licensed. At present, a person released from prison, until he is pardoned, cannot resume his occupation. He is, you might say, in a state of limbo or still in a state of isolation from society. This is, I would say, a catalytic agent for return to criminal activity, rather than an inducement to be a good member of society. So I do believe that we should adopt this section as the committee has reported it. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Arbanas, you have an amendment. Do you want the clerk to read it? Will the clerk please read Mr. Arbanas' amendment.

CLERK HANSON: "Mr. Chairman. I move to amend Section 28, page 10, line 3, by adding, after the word 'state', the following—quote—'death shall not be prescribed as a penalty for any crime'—end quote. Signed: Arbanas."

CHAIRMAN GRAYBILL: Mr. Arbanas has proposed an amendment to add a sentence at the end of Section 28 which would have the effect of abolishing the death penalty.

Mr. Arbanas.

DELEGATE ARBANAS: Mr. Chairman, fellow delegates, I do not presume to second-guess the committee. Yesterday I made a point of talking to Mr. Dahood and Mr. Blaylock about what had transpired in the committee with regard to the death penalty. And pretty much the word that I received back was the fact that, well, there is a national trend in this direction and that the federal courts are going to decide it anyway and that California has been on the bandwagon, and sooner or later it'll come to Montana, so to speak, and so that there's really not much reason for it to do it now, when the Legislature could do it anyway. I'd like to have us very seriously consider whether something is to be gained by a statement in our Constitution on this matter. I would liken it very much to this house of delegates; a motion comes on the floor and we all kind of listen to it and then say, "Well, is there something to be gained by my getting up and saying something about it?" And sometimes we do and sometimes we don't, but very often the actual vote of this house is influenced by what is said. And I'd like to submit to you today that as this national trend, you know, is before our nation, for us not to consider it even, or not to say something on it, might be a big mistake. I'd like to see Montana take a lead on something; and if we do adopt something, it'll be the vote of one more state in this direction. And I think that could be very important. So I'd like to see the issue debated by the Convention and faced by the Convention. I find it hard to imagine, in 1972, any Constitutional Convention meeting and not considering this very important item. The issue before the Convention, it seems to me in this item, is the sacredness of life. We have debated about the right to vote and the land and privacy and water. We come here, I think, in criminal justice, to a very important item of the sacredness of life. We have on the other side of the docket, murder; all sorts of terrible crimes that certainly we don't want to go easy on; but we always have to measure that against the sacredness of life. Perhaps we're unfortunate to meet this question right before noon hour, but I'd like to see the Convention react to the proposition. I'd like to see us be one state to vote in favor of the sacredness of life.

CHAIRMAN GRAYBILL: Mr. Woodmansey.

DELEGATE WOODMANSEY: I'd like to rise in opposition to the amendment by Mr. Arbanas. I think we have probably seen some trends at the national level in this area, but I think we're building here a constitution for the State of Montana. We've seen what, of course, California has done. I don't think we have to follow what the California courts have decided. Just what the courts of California decide does not necessarily say what the people of California, as a whole, believe. I know many people in California, and I have found them to be distressed with what has gone on. I know I have had people talk to me regarding this during the time we have had the Convention. I feel the people I represent want something there. I don't think they feel that we're going to go out and use the rope, as is possible, but I think many people feel that it may serve a deterrent in any way. And I think if you were affected by some major crime like this, that you would have strong opinions this way. And I'm very much against putting this into the Constitution and changing our present stance on this. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman. I rise in support of the Arbanas amendment. I think that the proposal of the committee, in effect, dodges the issue; or maybe it really doesn't dodge the issue either, because the committee proposal says that the punishment of crime shall be founded upon the principles of the prevention and reformation. Now, I fail to see how the application of the death penalty, in any way, can come within the scope of that particular clause and intent. It seems to me that we have long since passed the time when this type of amendment is due in our Constitution. I think the Constitution is the place to tackle this sort of issue. I don't think it's the sort of thing that we ought to pass on to the Legislature. I believe that we have a duty to the people of our state to, in effect, carry out to its conclusion the thing that has been begun by the committee's proposal. They have struck a very important phrase from the present article, and it seems to me that that indicates that we are moving one step more in the direction of the abolition of the death penalty. And I think that the Arbanas amendment makes this clear, makes our intent clear, and I support the amendment.

CHAIRMAN GRAYBILL: Mrs. Speer. Miss Speer.

DELEGATE SPEER: I rise to support Arthur Arbanas' motion. I have a great respect for this Bill of Rights Committee and the Chairman, but I do have strong conviction and I want to speak. I feel that the death penalty is an archaic relic of the past years when there was little regard for life. And I would like to see this Constitution, representing the people of Montana, commit this state to the abolition of revengeful punishment for crime.

CHAIRMAN GRAYBILL: Mr. McCarvel.

DELEGATE McCARVEL: Would Delegate Arbanas yield to a question?

CHAIRMAN GRAYBILL: Mr. Arbanas?

DELEGATE ARBANAS: Certainly.

DELEGATE McCARVEL: You speak of the sacredness of the human life. Which one are you talking about? The man that commits the crime or the man that he does away with?

DELEGATE ARBANAS: That's a pretty good question. I think that our—the sacredness of life, of course—we know that the tremendous crime that is committed with murder—and I think that our way of handling in the past has been "an eye for an eye and a tooth for a tooth" sort of thing; that "you took my life and the state takes your life". And that's, I think, what Mrs. Speer was talking about when she talked of vengeful taking of life. I don't—if this were a deterrent, if this actually reduced that type of crime and—then I think we'd have something to talk about. I think there, our modern investigation, modern thought in this would tell us and pretty well display that what we had in mind to accomplish, you know, to protect that sacredness of the life of the man being murdered, actually is not being accomplished. In other words, it's almost like the man who's desperate to do something. I mean, it just seems that if you wanted to take a life, or lets say, I mean, to punish by taking a life, that that would be the supreme punishment for the supreme crime. But in fact, it doesn't happen that way. But, I mean, as far as the deterrent, as far as the philosophy of an eye for an eye; so I think that I understand what you're saying, but I don't think it actually argues against the point.

DELEGATE McCARVEL: Would Delegate Arbanas yield to another question?

DELEGATE ARBANAS: Yes.

DELEGATE McCARVEL: Well, in doing away with the death penalty, does that not cheapen my life? You can take my life, but I can't take yours.

DELEGATE ARBANAS: Well, I don't know if you were dead that you could take my life. But the—I don't believe so. It's necessarily not the intent of why—the opposition to the death penalty. Certainly if you—what you're saying, an eye for an eye and a tooth for a tooth, that's a philosophy. It seems to me that what we have to look at here is that any one of us, at any time in our life, make a certain number of mistakes and we do harm to one another. We do it every day, in smaller ways or in larger ways. And so that, after a particular incident has happened, then you have—we, as society, have—how do you deal with that? You deal with it by correction. You deal with it by using your information to prevent other things happening. You deal with it by rehabilitation. Well, I submit that death doesn't do any of those.

CHAIRMAN GRAYBILL: Mr. McCarvel.

DELEGATE McCARVEL: Maybe—would Delegate Arbanas yield to another question?

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: Certainly.

DELEGATE McCARVEL: What about a man that is we'll say, put on—imprisoned for life? What is to deter him from taking a guard's life, because he's already in there? And if he is—through some action of one of the guards, he may take his life. It doesn't mean any more to him.

DELEGATE ARBANAS: What your question probably presumes is the man who is so intent on evil or so twisted that he's, you know, a murderer. That—I submit there are other ways of doing that too. But I don't know how—our presumption is when someone commits a crime, they are a bad person, rather than a person who's made a mistake. Maybe that's really the difference in the philosophy that we're bantering back and forth in our questions; whether you think a person is a bad person or a person who made a mistake. And I'd submit that adopting one of those philosophies or the other may well depend how you take care of it.

DELEGATE McCARVEL: Well, I feel that there is a difference between a disturbed person and one that is just inherent to kill, that's all. And I think there is a difference in between there. And one would be in a mental institution and the other one would be in a prison. That is all, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Murray.

DELEGATE MURRAY: Mr. Chairman. I move that the committee recess until the hour of 1:30 p.m. this day.

CHAIRMAN GRAYBILL: Before we recess, the Chair would like to announce that there is a Citizens' Corps luncheon at noon at Jorgenson's.

Mr. Blaylock, for what purpose do you arise?

DELEGATE BLAYLOCK: To announce a committee meeting of the Bill of Rights, right after adjournment in the committee room.

CHAIRMAN GRAYBILL: Mrs. Blend, for what purpose do you arise?

DELEGATE BLEND: To announce a committee meeting of the Local Government Committee in Room 437 during the lunch recess. Please bring your lunch.

CHAIRMAN GRAYBILL: Will everyone wait until we finish the business at hand. It's very disconcerting to the Chair to try and adjourn this meeting when everybody's standing up, and to take announcements. Will everyone please sit down. Okay.

Mrs. Sullivan.

DELEGATE SULLIVAN: Mr. President [Chairman], I'm sorry, but with all the commotion, we didn't hear the announcement that you made.

CHAIRMAN GRAYBILL: Right. The announcement I made was that there's a noon luncheon for the Citizens' Corps executive people, and many people involved in the Citizens' Corp know about it. And I'm asked to remind you of that luncheon at Jorgenson's this noon. Now, the motion is to adjourn this Convention until—or this committee until 1:30 p.m. All in favor, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: Adjourned.

(Convention recessed at 12:03 p.m.—reconvened at 1:45 p.m.)

CHAIRMAN GRAYBILL: The Committee will be in order. Ladies and gentlemen, before lunch we were debating Section 28 of the Bill of Rights Article, and Mr. Arbanas had offered an amendment which would add a sentence to the Bill of Rights Article on rights of the convicted saying: "Death shall not be prescribed as a penalty for any crime." We had not taken a vote. We're going to continue to debate on that issue. Does anyone else care to speak?

Mr. Harper.

DELEGATE HARPER: Mr. Chairman and group, I think we are to a place where we can do something for the State of Montana psychologically. I believe that most of us in our own private consciences would find it hard to vote if we were on a jury to have a man killed or a woman killed. I think most of us personally would shy away from it; I think most of the people in the State of Montana would. I've been reflecting on this over the lunch hour, and I think what the people of Montana would like to see—they would heave a big sigh of relief, in fact—if some group like the Constitutional Convention—or if we don't do it, some day the Legislature—would just all together sort of tighten their belts, stiffen up and do this thing; just remove this from the lawbooks. Now, I think there'd be just a big sigh of relief go up from people all across our state. Now, I think there's some practical reasons for doing this, too. I'm a little suspect of a law that's on the books that isn't operative. I suppose lawyers here can tell us when the last death penalty was placed in Montana.

UNIDENTIFIED DELEGATE: 1944.

DELEGATE HARPER: '44? It isn't anything that is presently done. I have heard people say, particularly lawyers, that people on juries are a little bit reluctant to bring in a first degree murder conviction because they are not always sure that the judge might not impose a death penalty; which implies to me that it really makes almost ineffective the more stringent types of punishment we would like to place upon a person who has committed an offense that would call for capital punishment. The other side of the coin—and it's practical, too—is that as a result these jury trials seem to drag out almost interminably and the State of Montana is cost a lot of money that might otherwise not have to be spent on these jury trials. If we ourselves as a people on a jury would not like to see this, I sort of hate to put other citizens who might be on juries in the future in the place where they have to face this. I think the committee has already given us a good lead, because in writing this present Section 28 they state, "Laws for the punishment of crime should be founded on the principles of prevention and reformation". So it seems to me like this is a logical amendment here, because the things I have read in the last 20 years or so from people who have tried to write objectively in this field all indicate that capital punishment on the lawbooks is not really a case of preventive medicine and does not do the job for prevention. I think no one can quarrel with the fact that it is a very poor way to reform a person. The average corpse is seldom reformed by the fact that he has been rendered so by some judicial decision. I think, for practical purposes as well as for maybe the bigger psychological, philosophical principle that underlies this, that the State of Montana would, in a sense, breathe a real sigh of relief if we just, as their Constitutional Convention, would strike forever this archaic law from our books.

CHAIRMAN GRAYBILL: Mr. McKeon.

DELEGATE McKEON: Mr. Chairman, I rise in support of the motion by Delegate Arbanas to abolish the death penalty in Montana. I've done some reading during the lunch hour on death penalty statistics and the philosophy of the death penalty in general. I noted there are 14 states presently in this country without the death penalty. These states have been studied in comparison to states with their borders adjacent and the other states in general, and it has been found that the states without the death penalty do not have a rate of capital crime any higher than any of the states with the death penalty. We have heard the argument that the death penalty is a deterrent to crime. I feel this is the shabbiest of arguments in defense of the death penalty. The death penalty is not a deterrent. We all know, I am sure, that most death cases are—result from passion. Murder is a crime of passion. It is not a reasoned crime. For this reason, I submit the hanging over the head of the person of a death penalty plays no part in deterring him from the crime. I read of some interesting cases. There was a case in one state where a police officer argued very vehemently for the death penalty on the statute books of that case. Ten days after the—his argument was adopted in that state, he murdered his wife. There are other cases where a man was in prison for a crime and while in prison he helped in the erection of a gas chamber. He was released and immediately committed a murder. Now this man must have been quite aware of the possibilities of death for the crime of murder in that state, yet they did not—yet this possibility did not deter him. The examples are legion. The examples of this situation are legion. Also in a book I read, entitled *The Case Against Capital Punishment*, the author pointed out that murderers are least likely to be recidivous. Recidivists, as you know, are repeaters. Parole officers from across the country were examined, and they testified that the paroled murderer was least—was probably the best parolee. He, more than others, realizes the error in his ways and is more likely to try to redeem himself in the eyes of society. Also, Mr. Chairman, I think that with 14 states having abolition of the death penalty, we have a situation which is somewhat similar to a lottery. We take our chances, depending on the state in which we happen to commit the crime. But I would say, and perhaps this is the strongest argument which I have, that civilization is gauged by the way people treat others; and if we are to progress and if we are to become more civilized, then, Mr. Chairman, I say we must look at the way we treat others. And I think one way is to abolish the death penalty as inhuman and barbaric and no way for a society that portends to be civilized to continue. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, on behalf of the committee, I think our fellow delegates should know our position with respect to this issue. I am personally opposed to the death penalty. I think the evidence in favor of abolishing the death penalty preponderates. I'm not going to go into all the reasons and the statistics that exist. They could be discussed here. We could conduct an intellectual debate, and I'm satisfied if we could measure it on some logical scale, those that favor the abolition of the death penalty would prevail. Unfortunately for that position, statistics throughout the United States reflect that the people are not as convinced as some of us that the death penalty should be abolished. The latest survey indicated that 51 percent favor the death penalty. We are not going to place in the Bill of Rights or in this Constitution, as far as our committee is concerned, an issue that could very well be the basis for a crusade and a campaign against the entire document. Let me suggest this to you, my fellow delegates: placing separate proposals on a ballot has a very useful function to perform. It generates interest in the constitutional issue. We have one issue that will be on the ballot in the alternative with respect to the Legislature. I submit to you we need more than one. The abolition of the death penalty question might very well be another proposal that has sufficient merit to appear as a separate proposal. This is going to generate debate and discussion throughout Montana, and I am sure that there will be a number of citizens who will go to the polls simply because that issue is presented to them in that fashion, and let them decide it. After all, on an issue that statistics indicate is so close to the division point of public opinion, I think we ought to leave it up to the people to decide it. That is our position on the Bill of Rights Committee. I think when our committee voted, I think we would have voted to abolish the death penalty, but we're here to serve this Constitutional Convention to the best of our ability, wisely and practically, and we do not want to do anything that may cast aside all of the good and great things that we are doing and will accomplish before this Convention adjourns. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. President [Chairman], I support the resolution of the Bill of Rights Committee in this instance, that the abolition of the death penalty should not be included in this section. I also support, if there are not too many other provisions going to the people, the reference of this question to the people. I stated in my campaign for this office, whenever I was asked, that I personally opposed the abolition of the death penalty and I would oppose it here, but that if anything was to be done about it, I would favor its referral to the people of the State of Montana to decide. If they wish to decide this through an initiative measure, they can, without it being included in the Constitution. If, when the majority of the Legislature decides the death penalty should be abolished, they would have that power under the proposal. I would like to state in answer to the argument that civilization is rated by the way we treat others, that the 51 percent of the people of this country who do not favor doing away with the death penalty feel that it is probably proper that we give some attention to the people who are being murdered. It is true, probably, that a murderer is not a recidivist. It is also true that the person who is murdered does not repeat the performance. No one in this state is now or will be, under our laws, sentenced to death except for a willful, premeditated murder. In my experience in the courtroom and previous to that as a court reporter, I have only seen one man sentenced to death. His sentence was commuted by Governor Ford. That man deliberately shot a person in the back. He did it willfully, he did it intentionally, and he pleaded guilty to the act. The court sentenced him to hang. The fact that Governor Ford, for the sake of his family, saw fit to commute that sentence, in my opinion is no reason for the law to be changed. Whether or not the death penalty is a deterrent, I feel anyone who commits a crime of premeditated willful murder should know that the possible sentence for that penalty is death. Bobby Kennedy did nothing to Sirhan. When he killed him, he killed him deliberately and intentionally. And I know of no reason why he should be reformed to go out and possibly kill again, or to do some other act, if the jury found he met the qualifications of the law in California. When a person is convicted of deliberately murdering and raping an innocent girl and he meets the qualifications of the law, I see personally no justification, either in religion or morals, for the rehabilitation of that person. I read in the book on the case against the death penalty where it had a bad psychological effect on the convicted person. Yes, if he is convicted, the effect is psychologically bad. I could and would vote for the execution of a person who met the requirements of the law as a premeditated murderer. I think there are many other people in the State of Montana who would do this, and I do not think that the law should be changed until it is changed by the Legislature or the people of Montana. Thank you, Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Melvin.

DELEGATE MELVIN: Mr. Chairman, I must rise in support of the position of the committee on Section 28. Everybody in this room believes in capital punishment or else you don't believe in the system. You have put stars and badges on officers and handed them guns, and many times those officers are called upon in seconds' time to decide whether or not they believe in capital punishment. Now, I think that this is the issue. In a matter of seconds, those officers have to decide. Some of these cases of murder—and we're not talking about mistakes, we are talking about first degree murder, which requires the element of premeditation, planning, a decision to commit murder before the murder is committed, or else a case of a person participating in a felony and committing murder at that particular time. Now, I am sure that I can speak for a good many law enforcement officers in Montana when I tell you that they would feel very much more confident if they felt there was a little backup. And after all, aren't we kind of jousting with windmills?—1944 was the last capital punishment in Montana. Now, in the past week or 10 days, there was an article in the papers from the Associated Press, from the Montana Criminal Law Commission. And they're recommending that the death penalty be used if the court finds that: one, the deliberate homicide was committed by a convict sentenced to imprisonment for more than 30 years; number two, the defendant was previously convicted of another deliberate homicide; number three, the deliberate homicide was committed for pecuniary gain; number four, the deliberate homicide was especially heinous, atrocious or cruel, manifesting exceptional depravity. Is that too much to ask? And as far as a deterrent is concerned, I think that this is a question that will be argued from now until there's no longer a world. We have talked about a state to the east of us, and that particular state has life imprisonment for murder. By a man's own admission, he realized that he was in Montana when his wife informed him that she was not interested in a reconcilement, and he realized that Montana still used the rope, so, by his own statement, he drove back to that fair state before he committed the deed, and he received life imprisonment. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Romney.

DELEGATE ROMNEY: Mr. Chairman, I call your attention to the fact that West Virginia formerly had ceased to use capital punishment, but in the past month they reverted to capital punishment. I call to your attention the deed of this man Mason [sic] and his three girlfriends who recently—I forgot the name. (Laughter) Anyway, you know who I mean—down in California. He and his three women accomplices killed several people and have been sentenced to death and now apparently are reprieved by action of California in doing—the court doing away with the death sentence there. I don't know whether capital punishment is a deterrent or not, but how many of you have ever seen a legal execution? I have. I've seen two of them. In 1921 or '22, the State of Montana executed a man by the name of Vulkovich in Missoula. Sheriff Houston was in charge of the execution. The county erected a huge pine-board fence around one corner of the courthouse. Imposing invitations were printed and mailed to many people. I was a young newspaper reporter at the time, and I attended to view the proceedings to write the story for my paper. It was during the period of the noble experiment of Prohibition, but most everybody there was drunk on moonshine. They led the condemned man out, and during the proceedings they dropped him three times, and he strangled rather than having his neck broken. It's pretty grisly business, folks. Makes me sick to think about it. There were people who vomited. Some of them were nearly ready to faint; and I felt pretty much that way myself, although I was a pretty flip young buck in those days. About a year later, in early '24, while I was steamshipping in the Orient in what is now Vietnam, I witnessed another execution. The condemned man was—they kneeled him down before a block and with one stroke of a huge knife, the executioner sliced his head off, and the blood spurted up like that. I tell you, I'm not going to vote for capital punishment.

CHAIRMAN GRAYBILL: Mr. Martin.

DELEGATE MARTIN: (Inaudible)

CHAIRMAN GRAYBILL: Restate that, Mr. Martin.

DELEGATE MARTIN: I'm wondering if Delegate Dahood will yield to a question.

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I would, Mr. Chairman.

DELEGATE MARTIN: Is it a fact that presently we have capital punishment by statute?

DELEGATE DAHOOD: That is correct.

DELEGATE MARTIN: Is there any need to put it in the Constitution?

DELEGATE DAHOOD: There is no need, in my opinion.

DELEGATE MARTIN: Thank you.

CHAIRMAN GRAYBILL: Mr. Johnson.

DELEGATE JOHNSON: Mr. Chairman, I rise in opposition to the statement which would remove capital punishment from our statutes. There are only two or three reasons why I think a person should be executed. One of them, certainly, is when, just for instance, a man who would rape a little girl, two or three before they catch him, and murder each one as he goes along; and for all intents and purposes otherwise, the psychiatrists say he's perfectly sane. You can't find a thing—of course, these psychiatrists build themselves up and say they're great, they've really learned, they've got the new medical dictionary memorized, and they can treat these people so that they're completely cured; they turn them loose and in 2, 3 days you have another little girl, or two or three, raped and murdered, dismembered, whatever. This is vicious. This type of killer—when you turn him loose, this is what happens all the time. For some reason or another, somebody gets them turned loose, and they go out and kill somebody else. What kind of responsibility is it if you're going to let these people out again to do this? We should have that in [the] background. I don't believe in hanging everybody. (Laughter) However, there is another category where I would certainly like to see capital punishment used once in awhile, and that's for these drug wholesalers and pushers. This is the most fiendish operation. They ruin more lives than any number of murderers. Now, that's about all I have to say, except maybe you could add cattle rustlers in there. (Laughter)

CHAIRMAN GRAYBILL: Mr. Studer.

DELEGATE STUDER: Mr. President [Chairman], I maintain that the death penalty is a deterrent. I just bring it up because I happened to read about the Mafia and these gangsters and what they do every once in awhile, putting these fellows in a sack of concrete and throwing them off a bridge in the river, or taking them out and shooting them now and then. If they aren't using this as a deterrent, I don't know what they're using it for. It certainly does stop a lot of going off on directions that the chiefs don't want them to go, and that isn't even murder. They just keep them in line with a death penalty. I'm sure it's a deterrent. How can people quote figures when they don't know how many people haven't been murdered or raped because of the fact that there was a death penalty but they didn't use it, or something like that. There's no question—I mean, you can't guess as to how many people might have been killed or might not have been killed. The facts were, this morning on the television—it just happened to be on CBS or NBS [NBC]—I remember seeing a fellow talking about this same thing, the death penalty. And he quoted the figures that during the time that 42 people were reprieved, there were 5,000 more violent crimes in that period than in previous periods of the same length of time. This fellow was evidently for keeping on the death penalty, and he had a pretty good argument. I don't see what harm it does to leave it in there, and it may do some good. And if we do go on this alternate thing of Mr. Dahood, I believe that the alternate ballot might be the answer to it.

CHAIRMAN GRAYBILL: Mrs. Erdmann.

DELEGATE ERDMANN: Mr. Chairman, I support the stand of the majority report. I'm sorry I didn't know about Miles Romney's little stories, or I would have probably spent last night looking up the story of the Vigilantes and entertain you and shock you with the stories of the hanging of Henry Plummer and his road agents. However, I don't pretend to understand how men think; but I thought it might be interesting to you to know what the results of a *Good Housekeeping* poll have been in regard to capital punishment. About 10 years ago they polled their lady readers—and this represents middle-class women across America—and at that time the enlightened reading woman of the *Good Housekeeping* class were about 90 percent against the death penalty. But last fall, late last fall—and the reports of their last poll were published shortly before Christmas—they polled their lady readers again. And perhaps it was because of the assassinations or it may have been—they also mentioned it may have been the result of this increased danger from the airline hijackers, but at any rate the women had changed their mind. Sixty-some percent were in favor of the death penalty, with 30 percent, in rough numbers, being against it, and about 10 percent not responding. Thank you, Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Kamhoot.

DELEGATE KAMHOOT: Mr. Chairman, I think I would like to just address my remarks to Delegate Romney. He very emotionally and gruesomely described what he had seen. I'm sure if he'd have been on the riverbank over near Gardiner 2 years ago, he would have seen a sight that probably would have made him sick completely, when this fellow chopped another one up and ate part of him. And I'm sure the blood squirted pretty high there, too. I think Delegate Romney is well aware of the Lindbergh Law. I can remember when the Lindbergh Law was enacted, and it certainly did slow up the kidnapping of these children, and the reason it did was because it was for the death penalty for people that did these kinds of crimes. Now, I don't know how many people should be hanged or how many shouldn't, but I do feel that as long as Montana retains this right to put people to death on some of these crimes, that we may keep some of this crud out of Montana. And I certainly would be for that, and will not support the amendment of Delegate Arbanas. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mrs. Mansfield.

DELEGATE MANSFIELD: Mr. Chairman. I would just like to comment, along with the other members, that in this time—and especially after last night, the hijacking of airplanes—I think maybe we'll have to pass something like this too, along with the Lindbergh Law, to curtail this. Thank you.

CHAIRMAN GRAYBILL: Mrs. Eck.

DELEGATE ECK: Mr. Chairman, I rise in defense of our committee's position, and I do so somewhat reluctantly. And, I think along with a good share of the members on our committee, I very much oppose a death penalty. But I think that the kind of arguments we've had on the floor today indicate the kind of arguments we would get around the state during the campaign time. Now, we have a lot of fairly difficult issues to present to the public. We want them to be aware of the changes we're making in the structure of state government; we want them to be aware of the kind of government we are going to try to bring to the people of Montana. And I see this as an issue that could just cloud over everything else and really steal our thunder and in many ways prevent the people of Montana from facing up to the much more relevant issues that are facing us. I agree that the death penalty is not really appropriate; it's not really being used; the action we take probably is not going to make any difference on whether a person is ever executed in Montana. I think it's quite possible that the Supreme Court might take action on this and make any action on the state level unnecessary. But if we do feel that removing the death penalty is necessary and that it should be written into the Constitution, I think it would be much wiser to take it as a separate issue in some other year when we don't have an issue of this magnitude and this complication facing the people of Montana. And I urge you to stay with the majority report for this reason. I think this is a very difficult decision. I think a lot of us are going to be very reluctant to push a red button on this issue because we really do believe in abolishing the death penalty; but on the other hand, I think it's an appropriate thing to do. I think that it could cause the whole understanding of the constitutional issues a great deal of damage. Thank you.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman, I'd like to take issue with Mrs. Eck and what she said, because the committee chairman has, in fact, said that he favors the abolition of the death penalty. And if it is true, as someone stated here, that a majority of the public are very much opposed to doing away with this provision in our present Constitution, then I think we are already in trouble, because this is what the majority proposal does. It removes from constitutional status the death penalty and it leaves it up to the Legislature eventually to abolish it. Now, if the people of the state are so very much in favor of retaining it, then I suggest that we have already broached the issue and that if the people are this concerned they will then, in fact, vote against the Constitution if they're going to vote against it for that reason. So it seems to me that it would do no good, in the light of the proposal that the committee has brought forth, to put this on the ballot in an alternate form. I think this is the time and this is the place to decide the issue, and, again, I would support Mr. Arbanas' amendment.

CHAIRMAN GRAYBILL: Mr. Wilson.

DELEGATE WILSON: Mr. President [Chairman], I rise in opposition to Mr. Arbanas' amendment, and I would like to pose this question to you fellow delegates. I wonder how many lives have been saved by the very fact that we do have this penalty hanging in front of people. Just ask yourselves, now, don't—wouldn't you think just a little bit about maybe they might stretch your neck if you killed someone? I wonder how many other people has thought about this. I wonder how many lives have been saved just with this thought. And I suggest to you that we have a terrific problem with law enforcement at the present time. Every law enforcement officer that is on duty never knows when he's going to be subjected to a bullet, and if you remove this little bit of fear that most law-abiding citizens have, what does a life sentence mean in Montana? The maximum is about 13 years. I've known several that got out in far less time than that—5 or 6 or 8 or 9—for murder. But there, again, I say—you don't know how many lives you have saved with this, with the very threat that this poses to the person and checks him just in time before he commits this crime. I think that this is something that we really need to think about. How many lives will we save—not how many people we're going to execute. Thank you, Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Choate.

DELEGATE CHOATE: Mr. Chairman, would Delegate Harbaugh yield to a question?

CHAIRMAN GRAYBILL: Mr. Harbaugh?

DELEGATE HARBAUGH: I yield.

DELEGATE CHOATE: Yes, Mr. Harbaugh. Where in the present Constitution do you find a provision that provides for capital punishment?

DELEGATE HARBAUGH: Well, the provision is in the parallel article, Section 24. Section 24 says: "Laws for the punishment of crimes shall be founded on the principle of reformation and preservation—prevention, but this shall not affect the power of the Legislative Assembly to provide for punishing offenses by death." And that's removed from the committee's language.

DELEGATE CHOATE: Okay, thank you.

CHAIRMAN GRAYBILL: Mr. Davis.

DELEGATE DAVIS: Mr. President [Chairman], fellow delegates. I am a person who has given a lot of thought to the death penalty over the years, and it's been in relation to making the decision of whether to ask for the death penalty or not in prosecuting murder cases. I've never had a case where I have asked for the death penalty. In the last five murder cases I tried, there were never a case where I could ask for the death penalty. But I think it's important for you to know, in the State of Montana, at the outset of the trial, you can make a determination as to whether you are going to ask for the death penalty or not, and that's binding and the judge cannot and will not give the death penalty if you ask for it. So it's not an automatic, speculative thing. In a trial, it's a thing that requires a lot of soul-searching; and you think one way one time in your life, and I suppose you think another way when there's a real heinous crime committed. I recall—it's not a type of thing where you're going to get a jury or a judge to very easily give a death penalty. In other words, when someone made the statement here, "Let's be strong and get rid of it"—I would submit that it's going to take someone an awful lot stronger that's going to be able to give the death penalty if they think it's [an] appropriate case for it. It wasn't too long ago I asked the judge from another jurisdiction what had happened where a boy had shot his father and mother and they turned him loose. And the judge said, "Well, they felt sorry for him because he's an orphan. (Laughter) And that's usually what happens on these type of cases. I mean, there's no rights in here for the victims of these crimes. I've been in the investigation where the widows and the orphans are completely forgot about, and all the rights are the other way. Everybody immediately starts thinking about the rights of the defendant. And then, there's another thing I really think that's kind of interesting in this thing. When you gave the right in your Constitution for anyone to give—use sufficient force to enforce—to protect his own life and his own property, you, in a sense, said you can shoot somebody in self-defense, and that's a death penalty in reverse. In other words, you wouldn't want to take that right away to protect your wife and your children and your property. I think we're creating a great deal of alarm over a situation that's not bound to happen. The matter's before the Supreme Court of the United States right now. It would seem to me this body, in its good judgment, would leave our Constitution in its present form, and it's a Legislative matter in its present form, or defer the matter to a vote of the people—in other words, and see whether we want to superimpose our personal, individual judgments on those other people who are quite concerned. I think the death penalty would be more important to put on the ballot than whether we can have lotteries, or a lot of other things that are going to come up as great big challenges of dealing with rights and so forth. This might be the kind of thing that everybody's voice should be heard in it. So I would support, in the best interests of this document that we're trying to write, leaving this matter in its present form and defeating the amendment and leaving the matter to the Legislature or putting it as a separate issue on the ballot.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, I have two principal objections to the death penalty. The first one is that the hangman's noose is a white man's weapon, not only here but in the South; and I believe the last man to be hung in this state was a black man, and there are very few black men in this state. I have referred to that very well-read document, Report Number 10, of Rick Applegate's, of the Bill of Rights, which I'm sure all of you have read thoroughly. On page 185, he states: "Race is a clear factor in the application of the death penalty. For example, between 1932 and 1957, twice as many blacks as whites were executed in the South. To be sure, crime rates for blacks and whites are different, but not to the extent reflected by capital punishment statistics. Especially in cases of rape, the discriminatory application is clear. From 1930 to 1962, 446 people were executed for rape. Forty-five were white, 2 were Indian and 399 were black. A total of 436 of these executions were in the South. Forty-two were white, 2 were Indian, and 392 were black. Just over two pages previous to that, in the well-read document of Mr. Applegate, on page 183, he set forth 10 states—the records in 10 states—for the period 1964 through '68. He matched up these 10 states, like Rhode Island and Connecticut, Wisconsin and Indiana—those that had the capital punishment and those that did not—and the statistics very, very clearly indicate that capital punishment is not a deterrent to capital crimes. They used to say the Germans had 200 words for making war and the French had 200 words for making love and the British had 200 reasons for hanging you. In 1801, the British hung a 10-year-old—13-year-old boy for stealing a spoon. The British, several years ago, after World War II, as you'll recall—the men of my generation—abolished capital punishment; and although we have capital punishment in almost all our states, including the great state of Texas, our President, Jack Kennedy, although we had a battalion of SS men—secret service men—to help protect him, was assassinated. Bobby Kennedy was assassinated, although California had the death penalty. Great Britain does not have the death penalty. The Prime Minister of Great Britain has one bodyguard. The British Bobbies do not carry guns, and yet their death rate—the number of capital crimes, rather—has decreased since they got rid of the death penalty. Only the Soviet Union, in the modern countries, and Spain and one other European country—I believe the French with their guillotines—still have capital punishment. The rest of the civilized—so-called civilized world has done away with it. I support Mr. Arbanas' amendment.

CHAIRMAN GRAYBILL: Mr. Arness.

DELEGATE ARNESS: Mr. Chairman, I have a question as to a point of order, I think. I notice on our desks that we have a proposed amendment that would deal with two other aspects of the same question, and apparently, regardless of how we go on this, we'll have to discuss that later. I wonder whether it's the intention of the proposer of this now to withdraw it, or are we going to have to discuss this again at a later time?

CHAIRMAN GRAYBILL: No, Mr. Arness. Oftentimes people have things that they want people to understand and they put them out on the desks. Nothing happens till it comes through the Chair, and I think we should not discuss or debate things that get on your desks until they're brought up. You may read them so you understand them, but if you start discussing or debating them before they're brought to the Chair or put on the floor, you're oftentimes debating something that need not be debated. I don't know whether they're going to be brought up or not. I let any of you bring up anything as you please, and I suppose it depends. So I think the practice of letting people put things on the desks ahead of time is a good one, because it lets people understand and gives them a little chance to read them. But this came up the other day, and I think we should not place too much significance on things put on the desks, except to read them, until they come before the body. Is there further discussion on Mr. Arbanas' proposal?

Mr. Artz.

DELEGATE ARTZ: Mr. Chairman, I have been patiently waiting for somebody to bring up this point, and I ask you to consider which is more important—this proposed Constitution or the life of an innocent person. Courts have made mistakes. Innocent people have been convicted. An innocent person has—after he has been executed, it becomes rather impossible to correct the mistake. I ask you how many have read the book, *Convicting the Innocent*? I also would like to ask you to consider one little sentence that goes about quite commonly; that only the poor are hung, not the rich. Thank you.

CHAIRMAN GRAYBILL: Mr. Delaney.

DELEGATE DELANEY: Would Mr. Dahood yield to a question?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE DELANEY: It would appear to me by these words "prevention and reformation" that you've already removed the death penalty in your article without this additional word.

DELEGATE DAHOOD: Delegate Delaney, we have not done that. Contrary to a misconception that seems to be prevalent, our present Constitution does not provide for the death penalty as a form of punishment. It merely states that the Legislature may enact legislation providing for the death penalty in a given case. That language, in our opinion, doesn't serve any real purpose in the Bill of Rights. We have merely removed the language, which results in changing absolutely nothing. The Legislature still has the power to abolish the death penalty or the Legislature has the power to extend the death penalty, and I commend to you Delegate Eck's comments that perhaps we are dealing with an issue that, for this moment and for this time, does not have that kind of importance because of all the factors that have been discussed here, and there are more important issues for the electorate of Montana. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman, what Mrs. Eck and what Mr. Dahood say may be true, but unless Mr. Arbanas is going to arise to withdraw his amendment, I'm going to have to do one of three things. I'm going to have to vote yes, I go for abolishing the death penalty; I'm going to have to vote no, I favor keeping it; or I'm going to have to sit here and not punch a button and let somebody else make my decision. Now, I'm going to make a decision, and it's going to be on a very simple basis. I think that the death penalty is wrong. Now, that may sound very naive and very idealistic and it may sound just like what you would expect a minister to say, because I do actually say that kind of thing Sunday after Sunday. Now this is Thursday and my congregation is not here and I'm not behind the pulpit, but I'm sitting here where we're all sitting, behind these two buttons. Now, if everybody in this room is for capital punishment, I'll just make my stand; I think it's wrong. If everybody in the State of Montana is for capital punishment, I still think it's wrong. I have voted that way on several issues. I believe in the right to free voting, so I voted that way. I would vote that way if somebody came in here and said everybody in Montana is for restricting the ballot. I would still vote that way. I voted for due process of law; I think no person should be denied it. If a whole group of people came in here and said this is going to make the Constitution in precarious balance, I would still vote for due process of law. I would vote against double jeopardy. I have voted for several issues in the Bill of Rights on the question of right or wrong and they have been my personal decisions, and I'll vote that way on this one, too. I do not think capital punishment is in accord with my principles, and so I shall vote against it.

(A dog entered the Hall and started barking—Laughter)

CHAIRMAN GRAYBILL: Mr. Foster.

DELEGATE FOSTER: Mr. Chairman, fellow delegates. I don't expect to contend with that type of competition, but I would like to respond in some part to Delegate Artz's comment and also, I think, to a degree to Delegate Harper's comments. Since the time that I was in junior high school and studying the question of capital punishment, through high school, all the way through college, and to the present time, I have always been opposed to it in principle. I am opposed to it on a very basic ground that for the state to take a life is really not the proper way to conduct the government of the people. And if we here assembled were up against the question once and for all, with no further chance to determine the question, I would vote in favor of removing the death penalty. But, in fact, we're not in that position. There will be other chances to remove this particular practice. The Supreme Court of the United States of America could remove it tomorrow. The Legislature assembled here one year from now could remove it one year from now. And assuming that the Constitution passes, the people of Montana by initiative could remove this at any time that they pleased in the future by referendum. And I feel that this issue is such that people that are opposed to removing the death penalty, opposed to putting in the Constitution that the State of Montana under no circumstances shall ever use capital punishment, are not going to reason this question out. And this is the type of a question which people will, from the very depths of their intestinal fortitude, if you will, will vote. And I feel that the Constitution will be in very grave danger if it gave these type of people no option whatsoever. I support the committee position completely, and I feel that we should not lock the door to people of the State of Montana that feel so strongly about this issue that they are not willing to consider any of the other merits of the Constitution. If a movement is made to put the question to a side issue on the ballot, I would also support that. But at this point, I oppose the amendment of Harold Arbanas and support the majority position of the Bill of Rights Committee. Thank you for your attention. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: Mr. Chairman and fellow delegates. I would like to close, and I appreciate the many fine thinking and concerned over this issue. I tried to make some notes during the various talks, and I hoped that I could go back and kind of at least react from my point of view on what was said. I mentioned that a vote in favor of this amendment would be a vote of this state for a national movement. Delegate Woodmansey seemed to think that I was implying that we had to do what California did. I wouldn't suggest that. I think that we have to not wait for others to do it. I think we have a possibility of doing something and taking a lead. All through the debate, the one thing that kind of kept coming back to me, of course, was the fact that this first murderer that we talked about, and I suppose in a case of murder this first murderer was wrong. I don't know how that suddenly sets up that another murder is right. I must confess that George Harper and I would be right on the same wavelength. I just cannot see that there is a right thing here. There's a presumption in our talks that the state can do that thing—that suddenly, because the state does it, it's right. I think there's a great deal to be said on your individual philosophy of whether you look on any crime as a thing that makes a person bad, or whether you emphasize in your mind the possibility of rehabilitation. One of the books I was reading had a sentence which impressed me very much—"The civilized goal of criminal justice is rehabilitation." I suggest that we live in a civilized time. There's possibly many cop-outs that all of us can take during the forum of this Convention. One of the cop-outs, of course, is to throw in "as determined by the Legislature"—and sometimes that's good; sometimes its bad. Maybe even a more severe cop-out would be, let's refer it to the people. I react very strongly about the idea that kept coming up over and over again—they could do it. What I'm trying to tell you today is we can do it and we have to face it that way. There was some talk—Delegate Habedank, when you talked—about the fact of such-and-such a case, there was no reason to reform this man and that even religion wouldn't save him; I would have to say from the point of view of religion that I have always been taught that somehow or another it's never too late, and that's the kind of religion I kind of stick with. The business of a law officer—I think that's a real different case than a cool, calculating murder of a criminal, or if you want to put it, execution. I suggest that that cool, calculating execution is not too much different than the cool, calculating execution we started with, and the fact that we do give guns to law enforcement officers is quite a different matter. There was a suggestion, too—and I think this is very important for you to think about—that between execution and letting a man out in 15 years we had no middle ground; that there was a suggestion that we let people out now in the short time so they can go out and repeat the crime. Maybe that's where the reform has to take place. We don't have to jump from, let's say, a poor detention system, the men you reform, to capital punishment as an excuse for that. After hearing Delegate Romney's description of the execution, I found it difficult to agree with Marian Erdmann that somehow hanging was good housekeeping.

(Laughter) I have to agree—disagree, too,—disagree with Delegate Eck on the matter that we should avoid the problem because it's a tough one; that we're working for reform of government in Montana and that's the kind of government we want to set, she said, before the people. I think that's the real point. Are we going to avoid those—that kind of issue? Finally, I suppose I began the argument on the sacredness of life. I would just hope that if the day ever came that I was on the docket and accused of a crime I never committed, that there would be people around that believed in the sacredness of life—the fact that I could be rehabilitated. I don't believe we can keep saying they could do it; I think we have to say we could do it. I don't think we have to keep saying that the people of Montana will vote their emotions, and then vote our emotions. Somehow or another, somebody has to deal with this in a reasonable fashion. Thank you.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Arbanas' motion—

UNIDENTIFIED DELEGATE: Roll call.

CHAIRMAN GRAYBILL: Yes, we'll have a roll call—to add to the end of Section 28 the language: "Death shall not be prescribed as a penalty for any crime." So many as shall be in favor of Mr. Arbanas' motion, vote Aye; so many as shall be opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Very well, take the vote, Mr. Clerk.

Aasheim	Absent
Anderson, J.	Nay
Anderson, O.	Nay
Arbanas	Aye
Arness	Nay
Aronow	Nay
Artz	Aye
Ask	Nay
Babcock	Nay
Barnard	Aye
Bates	Excused
Belcher	Nay
Berg	Aye
Berthelson	Nay
Blaylock	Aye
Blend	Absent
Bowman	Nay
Brazier	Absent
Brown	Nay
Bugbee	Aye
Burkhardt	Aye
Cain	Aye
Campbell	Aye
Cate	Aye
Champoux	Aye
Choate	Nay
Conover	Nay
Cross	Aye
Dahood	Nay
Davis	Nay
Delaney	Nay
Driscoll	Aye
Drum	Nay
Eck	Nay
Erdmann	Nay
Eskildsen	Nay
Etchart	Nay
Felt	Absent
Foster	Nay
Furlong	Excused
Garlington	Nay
Gysler	Nay
Habedank	Nay
Hanson, R.S.	Nay
Hanson, R.	Aye
Harbaugh	Aye
Harlow	Aye
Harper	Aye
Harrington	Aye
Heliker	Aye
Holland	Aye
Jacobsen	Nay
James	Nay
Johnson	Nay
Joyce	Absent
Kamhoot	Nay
Kelleher	Aye
Leuthold	Aye
Loendorf	Aye
Lorello	Aye
Mahoney	Nay
Mansfield	Nay
Martin	Nay
McCarvel	Nay
McDonough	Aye
McKeon	Aye
McNeil	Nay
Melvin	Nay
Monroe	Aye
Murray	Nay

Noble	Nay
Nutting	Absent
Payne	Aye
Pemberton	Nay
Rebal	Nay
Reichert	Absent
Robinson	Aye
Roeder	Absent
Rollins	Aye
Romney	Aye
Rygg	Aye
Scanlin	Aye
Schiltz	Aye
Siderius	Aye
Simon	Aye
Skari	Aye
Sparks	Nay
Speer	Aye
Studer	Nay
Sullivan	Nay
Swanberg	Aye
Toole	Nay
Van Buskirk	Aye
Vermillion	Aye
Wagner	Nay
Ward	Nay
Warden	Nay
Wilson	Nay
Woodmansey	Nay
Mr. Chairman	Aye

CLERK HANSON: Mr. Chairman 42 delegates voting Aye, 48 voting No.

CHAIRMAN GRAYBILL: 42 delegates having voted Aye and 48 having voted No, Mr. Arbanas' motion does not prevail and we're still discussing Section 28.
Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman, I would request that the clerk read my amendment which has been presented.

CHAIRMAN GRAYBILL: Mr. Campbell has an amendment. Would you read it, Mr. Clerk.

CLERK HANSON: "Mr. Chairman. I move to place as a side issue on the ballot the following—quote: 'Death shall not be prescribed as a penalty for any crime against the state'—end quote. Signed: Campbell."

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Campbell's amendment, which is to place this matter as a side issue on the ballot: "Death shall not be prescribed as a penalty for any crime against the state."
Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman, if I may. I won't take a great deal of time on this to discuss it. I think the issue has pretty well been discussed, and most of us have our opinion on whether or not we're for it or against it. We have decided as a Constitutional Convention not to place it in the Constitution on the ballot. It is a large question. It's one that I think the people themselves should decide. One of the booklets that our committee received while considering this matter was *The Case Against Capital Punishment*, a hundred and fifty of which have been passed out. You may or may not have had a chance to read this. It goes into many of the areas that have been discussed here today, and I feel that if the people of Montana will take the time to discuss it, that they can come to their proper decision on the June 6th ballot as a side issue. I think if you follow the development of capital punishment, you'll know back in the 18th Century capital punishment was used in such things as a deterrent for fishing in a private stream, robbery of a rabbit warren, and as a deterrent, the crime of pickpocketing. But they found out that pickpocketing was going on at the time of a hanging for the same crime. Michigan, in 1846, which was a hundred and twenty-six years ago, was the first state to abolish it. Since then we have 13 other states. California, as you know, by their Supreme Court abolished it; and the United States Supreme Court is considering abolishing it—which would affect Montana, of course—as being cruel and unusual punishment.

(Chairman Graybill gaveled for quiet)

CHAIRMAN GRAYBILL: Go ahead, Mr. Campbell.

DELEGATE CAMPBELL: Thank you. The present majority report does not in any way abolish the death penalty, which is still in the statutes of Montana. If the people themselves decide on this side issue that they do wish to abolish the death penalty, I think they should have every opportunity and right to do so. I have one other matter that I would bring in the closing. I don't know how much debate this would require. I feel it is a proper item to be considered on the ballot as a side issue.

CHAIRMAN GRAYBILL: Mr. Kelleher.

DELEGATE KELLEHER: Mr. Chairman, I move to amend the proposal of my learned brother Campbell to read as follows: "The death penalty shall not be authorized except for the murder of policemen or prison guards on duty and for the commission of a second capital felony."

CHAIRMAN GRAYBILL: Very well, Mr. Kelleher has proposed an amendment to Mr. Campbell's proposal. Do you mean, then, to have your language, which is on your sheet, Mr. Kelleher, as an amendment to the section? Do you mean to have it as a matter to go on the ballot?

DELEGATE KELLEHER: Yes. It's the third one, Mr. Chairman, on that list.

CHAIRMAN GRAYBILL: Yes. Do you have that sheet with Mr. Kelleher's amendment? It's Number 3, but the title of it needs to be changed to move to put it on the ballot. And the substance of Mr. Kelleher's amendment is that the death penalty would not be authorized except for the murder of policemen or prison guards on duty or for the commisison of a second capital felony.
Mr. Schiltz.

DELEGATE SCHILTZ: Mr. Chairman, I'm going to attempt to do a service to both of these movements. I will suggest to both of you, if you lose this today, I think you've very well had it. Now, if you wait until you find out the relative importance of this thing by letting the Style and Drafting Committee come in with a report and possibly recommending this, and with the possibility of amending that report to include this, you're going to have a much better shot at it than if you try to bind the Style and Drafting Committee in its proposed ballot. I will say once again what I said last Saturday, that each issue as it's hot is the most important thing we're looking at, and the day after tomorrow it wanes just a little bit and it doesn't become so important. And you're just going to bind us to do something that is going to eliminate some other issue, and I urge the members of this committee to reject any binding of the Style and Drafting Committee on its ballot as of any hot moment. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Brown.

DELEGATE BROWN: Mr. President, I concur with Mr. Schiltz, and I thought we were told that they would make the recommendations and then we'd vote on all of them. As a result of that, I voted against Mrs. Babcock on the anti-diversion because I thought it was an improper motion at that time. But I thought this was up to Style and Drafting, and I don't want to make a decision on everything that's going on the ballot till we know all the issues.

CHAIRMAN GRAYBILL: Mr. Brown, that may require a comment from the Chair. The Chair doesn't invite these; I just take them when they send them up.

DELEGATE BROWN: I'm not criticizing the Chair.

CHAIRMAN GRAYBILL: Okay.
Mr. Harper.

DELEGATE HARPER: I'd like to ask a question of Mr. Schiltz for clarification and, likewise, I hope all the rest of you listen to the question. Do I understand what you're saying is that the Style and Drafting will decide, after we are through with all the issues, all of these documents, which things are to go as special issues on the ballot or not? In other words, now we have voted against this motion of having the deletion of the death penalty. Now, that was a clear vote. I was on the losing side, but it was a clear vote. Do I understand that Style and Drafting may decide, "Well, actually the Convention didn't really mean to vote against that—they really meant to put it on the ballot", and so you'll come back with that written up that way without any directive from the Convention?

DELEGATE SCHILTZ: Are you through asking your question?

DELEGATE HARPER: Yes.

CHAIRMAN GRAYBILL: Mr. Schiltz.

DELEGATE SCHILTZ: We won't decide anything. That's your original mistake. I've tried to say over and over again that we will propose a ballot and it may include things that have been rejected by this Convention as things that merit a choice by the voters. Now, if that's wrong, I want to be told by somebody that that's wrong.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: That's the very point of my question. I think right now we ought to tell the Style and Drafting Committee whether this is right or wrong. For example, I take it the Style and Drafting may come back with the idea that parliament should be an option, along with unicameral and bicameral. If the Style and Drafting Committee decides that anything that has been discussed that wasn't properly settled by the Convention, they can decide to propose—I realize it's not a final assumption, but you can propose it to us; and I just never dreamed that Style and Drafting had that kind of power, if you want to call it that. I think the Style and Drafting Committee, if and when this Convention directs that a thing should go on the ballot, should come back with a suggested way of putting it on the ballot, but not be allowed to suggest what issues go on the ballot.

CHAIRMAN GRAYBILL: Mr. Monroe was up, Mr. Dahood.

DELEGATE MONROE: Mr. Chairman, I am against the proposed amendment here, not in so much the intent, but in I think that we're, by putting this as a side issue or even suggesting us putting this as a side issue on the ballot, we're doing a disservice to ourselves and to the people of Montana. Rights, individual rights, rights we're trying to include here in the Bill of Rights of the State of Montana, should not be at the mercy of the whims of the majority of the people of this state or any state or any nation; and I think we'd be doing a grave disservice if we proposed that there should be anything in regard to the death penalty as a side issue on our ballot that we're proposing for the Montana State Constitution. And I would much rather just accept the vote that we just took and go with the majority report, rather than putting any of this as a side issue on our ballot.

CHAIRMAN GRAYBILL: Mr. Dahood.

DELEGATE DAHOOD: Mr. Chairman, I want to completely concur on the remarks of Delegate Harper. I, for one, would not expect to see anything on the ballot that we rejected on this Convention floor. It seems to me that our decision should be final and should be respected. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: Mr. Chairman, fellow delegates. Let me reflect, too, that during the debate one thing that impressed me was the fact the number of delegates who voted No and were opposed to this being in the Constitution, you know, made the statement that this should be a side issue and that's where it should be placed. And, you know, I respect them for their opinion; and somehow to say that we can't, as a group, say that's what we want to do is pretty tough procedure. We should be able to say that that's what we want to do. I resist that restriction. I'm sure it's not always wise and I'm not so sure it's wise here, but I would hate to see us not able to do that.

CHAIRMAN GRAYBILL: Mr. James.

DELEGATE JAMES: Mr. Chairman, fellow delegates. One thing, if we do put it as a side issue on the ballot, it could lock it in the Constitution. Now, I kind of think that we're tilting at windmills here. We had a very emotional issue yesterday on gun control. Now, I think there's been more light than heat generated. I don't think we're a bunch of guys in white hats and guys in black hats. I think—I don't think there's any of us here want gun registration. I think there are many of us here that are against the death penalty, although we didn't vote with Mr. Arbanas; we voted to go along with the committee proposal. I wonder how many here would want to drop the pellets in the gas chamber or pull the trap on the—as the hangman or push the button in the electric chair. I just don't know. Of course, you let the state do it; and you're still responsible, but you do it. But here is two things, federal gun control—you could lock it in the Constitution, then the federal government wipes it out, so you've got an archaic thing in the Constitution that doesn't mean anything anyway. If you, by amendment, put the death penalty in the Constitution, the Supreme Court rules on it and knocks it out, it's another archaic thing. So why should we clutter up our new Constitution with things that actually will be decided for us?

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman, fellow delegates. Fellow Delegate James, of course, is on the same committee, the Bill of Rights, and I'm afraid he misunderstands the nature of my motion, at least. My motion is to allow the people to decide whether or not they want to abolish the death penalty. If they vote No, that provision does not go in the new Constitution and it is left up to the Legislature, as the majority of the Bill of Rights Committee had recommended. This is not an either/or between two—one that will require it or one that will abolish it. It's whether or not the people want to abolish it, yes or no. If they don't want to abolish it, the Legislature still has it on the books and it would still be into effect. I would resist the amendment suggested by Delegate Kelleher. I think that this would lock something into the Constitution; this would not allow the Legislature to have the complete flexibility that it should have. And I think that the issue should clearly be presented—do we want to have the death penalty or not? And I feel that we should give it to the people to decide. In the book on capital punishment, they point out that some of these murders in prison have actually been committed by people who wanted to commit suicide and force the state to kill them, so I feel that Mr. Kelleher's amendment is ill-advised and would oppose it and urge that it be rejected.

CHAIRMAN GRAYBILL: Mr. Scanlin, did you want the floor?

DELEGATE SCANLIN: Mr. Chairman, this was—I was just inquiring a point of order and I was trying to write it out here. It seems to me that the Chair should rule on whether or not this is a legitimate part of the discussion; that is, to entertain a motion which is divorced from Section 28.

CHAIRMAN GRAYBILL: Yes, I see your point. And since you've raised it, the Chair will rule that it is a legitimate time to debate it. We've had so much debate on it, I don't want to do that all over again. I want to catch it right now while everybody's knowledgeable on the subject.

Mr. Scanlin.

DELEGATE SCANLIN: Mr. Chairman, I feel we're exhausted on that subject. We've beat the death penalty to death. (Laughter)

CHAIRMAN GRAYBILL: Stick around, Mr. Scanlin. (Laughter)

Mrs. Eck.

DELEGATE ECK: Mr. Chairman, could I direct a question to Mr. Schiltz?

CHAIRMAN GRAYBILL: Mr. Schiltz?

DELEGATE SCHILTZ: I yield.

DELEGATE ECK: Mr. Schiltz, I believe that we are concerned in one aspect of this about what is the proper way of calling the attention or getting some consideration from your committee. And as I understand it, it was suggested to us that we could submit a resolution asking your committee to consider something. It was suggested this morning that a petition could be circulated among delegates, asking your committee to consider something. Would it be more appropriate, rather than directing you at this time, to put in a motion asking your committee's consideration of an issue?

DELEGATE SCHILTZ: That only came to me as a rumor. I have no official knowledge that there is going to be any form of resolution or anything else. I want to reassure Mr. Harper and Mr. Dahood and a great many others of you that this is no great amount of power that is in the committee. This happens to be the hardest-working committee in this place, and we're overburdened. And let me assure you that if we can get out of putting this thing together, we'd be happy to get out of it; wouldn't we, Jim and Rich and everybody else on our committee? But we conceived—and this is our conception—from osmosis, I suppose, we picked it up—that this is the way the ballot is going to be prepared. We look at other people's ballots and they have alternatives on it and it has come from the Style and Drafting Committee; and as a matter of fact, it's just another form of reconsideration after we put that thing out to this body. We're not drunk with power; we don't even want the power, but we have it. If you want to do it by resolution and you got 87 names on it, we'll consider it. I haven't seen anything about a resolution.

DELEGATE ECK: Thank you.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. President [Chairman], I spoke in behalf of the amendment that Mr. Arbanas made, but I think that at this point I agree with the remarks that were made by Mr. James a few moments ago and that I will vote against a motion to place this in the alternative on the ballot. I'm satisfied that we had a good discussion of it here. I think that if this body feels that it does not want to include that provision, then it should not go on the ballot. And I would be against the motion and against the amendment to the motion.

CHAIRMAN GRAYBILL: Now, the Chair is going to entertain the rest of your debate, but the Chair wants to point out that we do have these motions and people do have the right to make them. And I think this body has the right to instruct Style and Drafting or it has a right not to, and you people have to decide it. But let's now try and stick, if we can, to Mr. Kelleher's amendment, which is whether you want the thing on the ballot to say—if it went there, which we're going to decide too—"The death penalty shall not be authorized except for the murder of policemen and prison guards on duty and for the commission of a second capital felony." Now, if you have something to say on that, let's decide it, and then we'll vote on that. And then we'll go ahead and vote on Mr. Campbell's motion as to whether to put it on the ballot, and then we'll go ahead and vote on 28 again.

Mr. Aronow.

DELEGATE ARONOW: Mr. Chairman, would Mr. Kelleher yield to a question?

CHAIRMAN GRAYBILL: Mr. Kelleher?

DELEGATE KELLEHER: Yes.

DELEGATE ARONOW: Bob, in looking at the language in this thing—"The death penalty shall not be authorized except for the murder of policemen or prison guards on duty and for the commission of a second capital felony"—could this be so construed—in looking at it, there's a doubt in my mind that the death penalty must be meted out if there's a conviction in the last part in those two or three instances.

DELEGATE KELLEHER: For those three cases—the murder of a policeman, or (b) a prison guard on duty, or (3), a commission of a second capital felony. It is not my—that's a good question, and it was raised earlier. It's a very good question, but it is not my intent. That's what I'm going to say for the record. It's not my intent that that be the case.

DELEGATE ARONOW: Okay.

CHAIRMAN GRAYBILL: Mr. Holland.

DELEGATE HOLLAND: Mr. Chairman, I am against the death penalty and I intend to vote, but I received a letter from a constituent which has a different viewpoint, and I want to read this to the Convention. I think it's quite important. "The Honorable Mr. Holland; Montana Con-Con, State Capitol, Helena, Montana. Mr. Holland: I would like to state my opinion on capital punishment. I think the people have the right to make a murderer pay for his crime with his life. I think if a murderer has been convicted and the state lawfully convicts him, he should pay for it with his life instead of being able to sponge off the people. I mean, we let a murderer kill somebody and then let him sit around while we give him a vacation for the rest of his life at our expense. This is not justice, to me. I understand that sometimes a man may be convicted unjustly, but this is just something that you have to take the good with the bad." (Laughter) Now, I'm going to make an amendment if these two bills don't, that if we keep the death penalty that the State of Montana be restricted to hanging no more than 10 innocent people a year. (Laughter) And I'm quite serious about this. England abolished the death penalty when they found out they hung a man unjustly, a man who was not guilty of the crime. And I am convinced, in this day and age—we haven't had an execution, I think, since 1966 or '67—I'm convinced that, we do one thing right, we should abolish this death penalty and do it today.

CHAIRMAN GRAYBILL: Very well, the issue is on—

Mr. Simon.

DELEGATE SIMON: Mr. Chairman. I've been listening very, very carefully to what everyone has had to say, and I didn't want to say anything until I had heard a great many people. I had an experience in my life that—it was as gruesome as my friend over here—when a 14-year-old girl left my store in Bridger, Montana, and the man that killed her brought her back in an hour, seated in his automobile, and drove up within a quarter of a block of my mother's home. Now, that's the gruesome part of it. But I think most of you know that I spent 5 years on your Board of Pardons of the State of Montana. I think most of you know that at the time the Board of Pardons was formed, that there were 685 people in prison. I think that most of you know that today that there's only two hundred and forty-or-fifty in prison, and most of them are out on parole or being given deferred sentences. Now today, with my conscience and my upstairs doing something to down here where your heart is, I voted green, and we lost. Now, I did that for a very, very specific reason. And I believe that what we've done here today has put us in a position that we are in at this moment; this hundred people, these hundred people here today, are saying to themselves, "I would not be the one that pulled the rope", and if we took a vote on that, I think we would have gotten a bigger vote in the green side. But I thought perhaps under some circumstances we must consider, or should consider—the fact is that we should give the people of Montana—now, each one of us represents about 7,000 people—we should give the people of Montana the opportunity to say whether they want to abolish capital punishment. Now, the reason that I voted as I did today—and I want to be very specific—that I have sat closer to more murderers, I believe, than anybody in this room, because I sat right across the desk in the prison, back in a little room they call the mug-room, and interviewed 4,400 interviews—twenty-two hundred-and-some people—on this Board of Pardons in 5 years. Now, the reason I voted like I did, and with the hope that we could give the people a chance on the ballot to ask these people, I thought perhaps that if we could take some time through the courts to find out how many people come into this state and are only in here from 1 day to 3 weeks that commit some of our more dastardly crimes from other states, you'd be astounded. The second reason I voted as I did, every murderer is innocent. And there was times in my life that I sat in front of a man—it was right—I was always in the middle of the desk—he was right there—where I was not sure that that man had been convicted of the crime. Now, they're all innocent, you understand, when they go to prison; but I was not sure that I could make that decision to turn that man loose. I could not make that decision if I had to, if I was going to say, "You put that man on the gallows, and I'll pull the string." I could not make that decision today. That's the reason I voted the other way. I would like a study made of our state that would indicate, in our major crimes of murder and rape, some sort of an analysis made of how many crimes are committed within 1 month, 1 year, 2 years—that are not our residents. I believe that this should go on the ballot. The people of the State of Montana should be given the opportunity to make this decision. I don't think we're making the right decision today. I think all of us voted as an individual; what we would do and not what the people of Montana would do. I urge you to put this on the ballot. If you have any doubts in your mind about how many come in here and commit dastardly crimes, you go down to the prison when the Board of Pardons meets, especially if they have 685, and listen to people who have been in the state for a few hours and have raped grandmothers, mothers, daughters—not once, but under three occasions on one conviction. Thank you very much, ladies and gentlemen.

CHAIRMAN GRAYBILL: Now, the Chair hopes to get a vote soon on these two things on the ballot, but Mrs. Babcock, you've been up before.

DELEGATE BABCOCK: Mr. Chairman, would a motion be in order to submit this issue of how we're going to put things on the ballot to the Rules Committee so that this could finally be decided? I think it affects some of our votes.

CHAIRMAN GRAYBILL: I don't think it would be in order before we take these votes. The point is, this body can do whatever it wants to. It can send directions to Style and Drafting; it cannot send directions to Style and Drafting; it can send the whole thing to the Rules Committee if you want to; but this body can do as it pleases. I'm not trying to tell them and I don't think any of us can. And you may make a motion, I suppose to—I suppose the only motion in order now would be a substitute motion to segregate—or to refer these matters to the Rules Committee. But I don't think you intend to refer the death penalty matter to the Rules Committee; you intend to refer the issue to the Rules Committee. And if you want to do that, you certainly may. But my point is that these things come up when people have them and send them, and that we have to vote on them and decide them. That's all I'm trying to do.

DELEGATE BABCOCK: I hope we can figure out some way how this body can do it.

CHAIRMAN GRAYBILL: Mr. Studer's been up.

DELEGATE STUDER: Mr. President [Chairman], I just wanted to clear up a point. Are we voting on Kelleher's deal as an alternative?

CHAIRMAN GRAYBILL: Mr. Kelleher moved that as an alternative to Mr. Campbell's.

DELEGATE STUDER: Well, it doesn't say so on the sheet I got.

CHAIRMAN GRAYBILL: No, but I've twice pointed out that you should amend the sheet, Mr. Studer, so that it says: "I move to put on the ballot the following."

DELEGATE STUDER: Okay, thank you very much.

CHAIRMAN GRAYBILL: Okay. Are there further questions on Mr.—before we go to vote on Mr. Kelleher's motion?

Mr. Heliker.

DELEGATE HELIKER: Mr. Chairman. I wonder if we couldn't take just a couple of minutes to eliminate the confusion in my mind, and I think in the minds of most of the delegates, as to what the power of the Style and Drafting Committee is. In Rule 51 it says that the Committee on Style shall prepare for submission to the electorate the proposals of the Convention and a ballot. Now I don't see how they can come back and propose to us something that we have voted down. How can they? It isn't a proposal of the Convention unless we voted for it.

CHAIRMAN GRAYBILL: Mr. Eskildsen.

DELEGATE ESKILDSEN: Mr. Chairman, fellow delegates. I don't have the authority, probably, to give you a decision on what we do, but I can assure you that anything that the majority here doesn't vote for certainly will not be done, and the Style and Drafting cannot do it. We have to have a majority vote in this body on any motion that is made and it will so carry, and that's the way it will be done. So, to—what Style and Drafting does, it will have to be with this body's sanction.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: You know, about once a week I get confused.

CHAIRMAN GRAYBILL: It's not Saturday yet, Mr. Champoux. (Laughter)

DELEGATE CHAMPOUX: I know, but I'm a day early this week. (Laughter)

CHAIRMAN GRAYBILL: Oh, that's right. You've made your point.

DELEGATE CHAMPOUX: Wait till tomorrow. (Laughter)

CHAIRMAN GRAYBILL: You've made your point. Do you want to sit down while you're ahead, Mr. Champoux? (Laughter)

DELEGATE CHAMPOUX: You know, I think this whole business about Style and Drafting could turn out to be a real dangerous thing and a lot of things could be read into it. For instance, if we get a motion back from Style and Drafting that they feel that a certain thing should be on the ballot, isn't that indirectly a move to reconsider, sir?

CHAIRMAN GRAYBILL: Are you asking the Chair a question?

DELEGATE CHAMPOUX: Yes, sir.

CHAIRMAN GRAYBILL: The Chair has never suggested that the way to get things on the ballot is to wait for Style and Drafting. Style and Drafting has suggested that. The Chair thinks that this body—if you want to know what the Chair thinks, I think this body has to suggest or send something to Style and Drafting, as we did the first day with unicameral, and tell them to put it on the ballot. Now, if we do that, I think they'd tell us how. But—I'm trying not to debate this, but my view is that you have to tell them. I don't think they should come up with new suggestions out of the blue. I don't really think they're going to.

DELEGATE CHAMPOUX: All right, thank you, sir.

CHAIRMAN GRAYBILL: I think maybe they're, in an abundance of caution, trying to keep the issues down. All right, are we ready to vote on this issue? The issue is Mr. Kelleher's motion, which is a substitute motion, to put on the ballot the following words: "The death penalty shall not be authorized except for the murder of policemen or prison guards on duty and for the commission of a second capital felony." The way, the precise way, in which it would go on the ballot would be up to Style and Drafting, but whether or not to make that an issue to go on the ballot is what we're talking about.

Mr. Kelleher, do you want to close, or you just want to—

DELEGATE KELLEHER: No, I don't want to take the time to close. I think the matter has been very thoroughly discussed. But Mason Melvin has just called to my attention something, and I would like to, if there is no objection, substitute for the word "policemen" the words "law enforcement officers" so as to include sheriffs, highway patrolmen, and indeed, for the record, all types of law enforcement officers.

CHAIRMAN GRAYBILL: All in favor of allowing Mr. Kelleher to make that amendment, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No. (No response)

CHAIRMAN GRAYBILL: So ordered. All right, are you ready for the question then? Those in favor of Mr. Kelleher's motion, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: All right, that one is defeated. Now we're discussing Mr. Campbell's motion, which is to place as a side issue on the ballot the phrase: "Death shall not be prescribed as a penalty for any crime against the state."

UNIDENTIFIED DELEGATES: Roll call vote.

CHAIRMAN GRAYBILL: All right, we'll have a roll call vote.

Mr. Campbell, do you want to close?

DELEGATE CAMPBELL: I certainly am not going to spend much time on it. I have received one letter, which is the most moving letter I've received since I've been at the Convention. It's from an inmate in our own prison, and many of us think with all the safeguards, innocent men never get convicted. Of course not; it couldn't happen. I'd just like to read to you. The first part of the letter, they were very excited about the first part of this section as an incentive for rehabilitation. On the second page, this is what this man in our prison wrote to me: "Recently I was faced with a moral dilemma which I later realized never existed. Briefly, a full confession was made to me by another prisoner regarding a murder he had committed. This man further indicated in detail how he had successfully framed another individual for this same crime. I'm ashamed to say that for 2 weeks I kept this information to myself. Fortunately, I was able to muster enough guts to overcome this rather warped sense of values, and now I know I've made the right decision. The guilty man has since been convicted, while the innocent one has been returned his freedom." It can happen. A man lied to convict another man to save himself, and with all the safeguards our system has, this can still happen. And this is why I think that this should be placed on the ballot, that people should consider it; and certainly the majority in the early 1400's knew without thinking about it that the world was flat, and I think that this is one thing that we're going to have to think about. And I would sincerely hope that we give the people of Montana this opportunity to abolish it or let the Legislature deal with it. Thank you.

CHAIRMAN GRAYBILL: Very well, we'll have a roll call vote. The issue is on Mr. Campbell's amendment to Section 28 to place—it's in conjunction with 28—to place as a side issue on the ballot the following sentence: "Death shall not be prescribed as a penalty for any crime against the state." All those in favor, vote Aye; and those opposed, vote No. Has every delegate voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Will the clerk take the ballot.

Aasheim	Absent
Anderson, J.	Nay
Anderson, O.	Nay
Arbanas	Aye
Arness	Nay
Aronow	Aye
Artz	Aye
Ask	Aye
Babcock	Nay
Barnard	Aye
Bates	Excused
Belcher	Nay
Berg	Aye
Berthelson	Aye
Blaylock	Aye
Blend	Aye
Bowman	Aye
Brazier	Nay
Brown	Nay
Bugbee	Aye
Burkhardt	Aye
Cain	Aye
Campbell	Aye
Cate	Nay
Champoux	Aye
Choate	Aye
Conover	Aye
Cross	Aye
Dahood	Aye
Davis	Aye
Delaney	Nay
Driscoll	Aye
Drum	Absent
Eck	Aye
Erdmann	Aye
Eskildsen	Nay
Etchart	Nay
Felt	Absent
Foster	Aye
Furlong	Excused
Garlington	Nay
Gysler	Nay
Habedank	Aye
Hanson, R.S.	Aye
Hanson, R.	Aye
Harbaugh	Nay
Harlow	Nay
Harper	Aye
Harrington	Aye
Heliker	Aye
Holland	Aye
Jacobsen	Aye
James	Aye

Johnson	Nay
Joyce	Nay
Kamhoot	Nay
Kelleher	Aye
Leuthold	Aye
Loendorf	Aye
Lorello	Aye
Mahoney	Nay
Mansfield	Nay
Martin	Nay
McCarvel	Aye
McDonough	Aye
McKeon	Aye
McNeil	Nay
Melvin	Nay
Monroe	Nay
Murray	Nay
Noble	Nay
Nutting	Nay
Payne	Nay
Pemberton	Nay
Rebal	Nay
Reichert	Aye
Robinson	Aye
Roeder	Aye
Rollins	Aye
Romney	Aye
Rygg	Aye
Scanlin	Aye
Schiltz	Aye
Siderius	Aye
Simon	Aye
Skari	Aye
Sparks	Aye
Speer	Nay
Studer	Nay
Sullivan	Aye
Swanberg	Aye
Toole	Absent
Van Buskirk	Aye
Vermillion	Aye
Wagner	Nay
Ward	Nay
Warden	Absent
Wilson	Nay
Woodmansey	Aye
Mr. Chairman	Aye

CLERK HANSON: Mr. Chairman, 58 delegates voting Aye, 35 voting No.

CHAIRMAN GRAYBILL: 58 delegates having voted Aye and 35 No, Mr. Campbell's motion prevails, and that will be sent to Style and Drafting for that purpose.

Mr. Murray.

DELEGATE MURRAY: Mr. Chairman, I move the committee recess for 15 minutes, until 3:35 p.m. this day.

CHAIRMAN GRAYBILL: Now, ladies and gentlemen, we're going to learn, I think, that we have to wait till this motion is put.

Mr. Rygg, do you have a—did you wish to be heard?

DELEGATE RYGG: I wanted to make a committee announcement. Is it possible to do that now?

CHAIRMAN GRAYBILL: Yes, sir.

DELEGATE RYGG: I would like to have Revenue and Finance, in Room 437, immediately upon recess. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Very well. Now, all in favor of recessing for 15 minutes, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

(No response)

CHAIRMAN GRAYBILL: Thank you. Recess.

(Committee recessed at 3:20 p.m.—reconvened at 3:50 p.m.)

CHAIRMAN GRAYBILL: The committee meeting will please come to order. Is there other discussion of Section 28?

Mr. Habedank.

DELEGATE HABEDANK: I have a motion which I'd like the clerk to read.

CHAIRMAN GRAYBILL: Right. The clerk will read Mr. Habedank's amendment.

CLERK HANSON: "Mr. Chairman. I move to amend Section 28, page 40, by addition of the following: 'Nothing contained in this section shall be—allow a person convicted of crime to continue in or enter any business, trade, occupation or profession when prohibited from engaging therein by the licensing provisions provided by law.' Signed: Habedank."

DELEGATE HABEDANK: Mr. President [Chairman].

CHAIRMAN GRAYBILL: Mr. Habedank, your amendment, which would add a sentence to 28 to the effect that anyone convicted of a crime may not enter a trade, business or occupation which—wherein he is prohibited by licensing provisions to do so, will be allowed and you may discuss it.

DELEGATE HABEDANK: Mr. President [Chairman], the Bill of Rights Committee, in their presentation on the floor before, very forthrightly said that it was their intention in the adoption of this article that when any person had served his sentence, he was to be restored both to his political rights and to his civil rights; which meant, as they explained it in answer to a specific question by myself, that if I as a lawyer were convicted of a crime, sent to the penitentiary, served my sentence, I would automatically be restored to the practice of my profession when I finished my sentence. Each profession, whether it's lawyer, doctor, certified public accountant, or any of the other professions, have licensing boards who exercise some discretion as to whether or not a person should be admitted to practice; and in the exercise of that discretion, I think it is proper that they should not, for the mere fact that a person has been in the penitentiary alone, be allowed to refuse his admittance to practice. But the mere fact that a person has completed his sentence does not, in my opinion, necessarily entitle him to full faith and credit and be returned to a profession. Licensing provisions are made for the protection of the public. I think the licensing boards in each of the professions are people of character and discretion, and as I read this provision as given by the majority, they would not have this discretion. They would automatically be required to restore a person to his profession, and I think this is going too far as a matter of constitutional law. The Legislature should be left some discretion in this matter, and as I look at it, my amendment would do this. And I urge your support of the amendment.

CHAIRMAN GRAYBILL: Is there discussion?

Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman, I rise to oppose the proposed amendment of Mr. Habedank's. Certainly nothing is a greater threat to rehabilitation than the present restrictions we've placed on people whom, at the end of their sentence—not just the time that they're released from prison, but the time at which they are released from supervision, the time at which we tell them, "You have paid your debt to society, we are going to restore your rights." This is what we determined in the Bill of Rights Committee would be only fair. At the present time, a person cannot—there is no discretion in the board. If you have a felony in your record, you cannot engage in these occupations that the Montana Legislature has provided felony restrictions on. They include approximately 23 professions. It has gone all the way from the doctors, the lawyers, the teachers, all the way through the barbers and to the last classification that the Legislature put that a felon could not engage in, and that is an artificial inseminator for cattle. Now, I say to you, the Legislature is going too far, that there is no reasonable relationship between a person's past record and the ability to practice any meaningful occupation in this state. This would be a step forward. It would judge a man on his merits. I still believe that if he was unfit to practice his particular profession, it could certainly be handled by the Legislature. We do not intend to bind this in as far as that goes. It's my position that right now there is no discretion on the boards at all; that if there is truly some relationship between a man's fitness to practice his profession, then certainly the board should and will have it even under this amendment. It's just saying that we're giving him the presumption, when he starts out, that he's capable, that he's paid his debt, that he can engage in some meaningful occupations which he cannot now. For the rest of his life he is, at the present time, excluded from all of these occupations and he's certainly rejected from the system. And I think that if we are going to have rehabilitation, we're going to have to start with a clean slate. I've talked with the Parole Board on this. They have been very excited about this. This is one thing that would certainly help them in the rehabilitation, and I would oppose the amendment. I feel it is destroying the very thing that we're trying to do, and that is to make useful citizens out of people who have made a mistake and paid their debt. Thank you.

CHAIRMAN GRAYBILL: Is there further discussion?

Mr. Habedank.

DELEGATE HABEDANK: Mr. Chairman, I would like to close. In answer to what Mr. Campbell has said, he is correct up to a point. But the Legislature can change this, and when we lock it in the other way, I submit to you that we are locking into the Constitution a provision that will prohibit you from protecting the public through the Legislature.

CHAIRMAN GRAYBILL: Very well, the issue is on Mr. Habedank's—

Mr. Studer, you want to speak?

DELEGATE STUDER: No, I just wanted to ask if we could have that read to us—that amendment.

CHAIRMAN GRAYBILL: I'm going to read it to you.

DELEGATE STUDER: Okay.

CHAIRMAN GRAYBILL: The issue is on Mr. Habedank's motion that we add the following language to Section 28: "Nothing contained in this section shall allow a person convicted of crime to continue in or enter any business, trade, occupation or profession when prohibited from engaging therein by the licensing provisions provided by law. Nothing contained in this section shall allow a person convicted of a crime to continue in or enter any business, trade, occupation or profession when prohibited from entering therein by the licensing provisions provided by law." So many as shall be in favor—

UNIDENTIFIED DELEGATE: Roll call.

CHAIRMAN GRAYBILL: Roll call. So many as shall be in favor of adding that to the Section 28 on the Bill of Rights, please vote Aye; so many as shall be opposed, vote No. Have all the delegates voted?

(No response)

CHAIRMAN GRAYBILL: Does any delegate wish to change his vote?

(No response)

CHAIRMAN GRAYBILL: Will the clerk take the vote.

Aasheim	Nay
Anderson, J.	Aye
Anderson, O.	Absent
Arbanas	Nay
Arness	Nay
Aronow	Aye
Artz	Aye
Ask	Aye
Babcock	Nay
Barnard	Nay
Bates	Excused
Belcher	Aye
Berg	Aye
Berthelson	Aye
Blaylock	Nay
Blend	Nay
Bowman	Aye
Brazier	Absent
Brown	Absent
Bugbee	Nay
Burkhardt	Nay
Cain	Nay
Campbell	Nay
Cate	Nay
Champoux	Nay
Choate	Absent
Conover	Nay
Cross	Nay
Dahood	Nay
Davis	Nay
Delaney	Absent
Driscoll	Absent
Drum	Aye
Eck	Nay
Erdmann	Aye
Eskildsen	Absent
Etchart	Nay
Felt	Aye
Foster	Nay
Furlong	Excused
Garlington	Aye
Gysler	Absent
Habedank	Aye
Hanson, R.S.	Nay
Hanson, R.	Absent
Harbaugh	Nay
Harlow	Nay
Harper	Aye
Harrington	Nay
Heliker	Nay
Holland	Absent
Jacobsen	Aye
James	Nay
Johnson	Aye
Joyce	Nay
Kamhoot	Aye
Kelleher	Nay
Leuthold	Aye
Loendorf	Nay
Lorello	Nay
Mahoney	Absent
Mansfield	Absent
Martin	Absent
McCarvel	Nay
McDonough	Nay
McKeon	Nay
McNeil	Nay
Melvin	Aye
Monroe	Nay
Murray	Absent